

## CHAPTER 6

# NONJUDICIAL PUNISHMENT

As a Master-at-Arms (MA), you will be involved with all aspects of nonjudicial punishment (NJP). NJP is better known in the Navy as *captain's mast*, or just *mast*, a term from the early sailing days when the usual setting for this type of naval justice was on the weather deck at the front of the ship's mainmast. In this chapter, we will discuss the duties and procedures required before, during, and after NJP proceedings.

Both commanding officers (COs) and officers in charge (OICs) can conduct mast. For a discussion on the differences between masts held by COs and OICs, see Article 15, *Uniform Code of Military Justice* (UCMJ) and part V of the *Manual for Courts-Martial* (MCM).

The terms *nonjudicial punishment* and *NJP* are used interchangeably. They refer to certain limited punishments that can be awarded for minor disciplinary offenses by a CO to members of command.

Article 15 of the UCMJ, part V of the MCM, and part B of chapter 1 of *The Manual of the Judge Advocate General* (JAGMAN) cover the basic law on NJP procedures. The legal protection afforded an individual subject to NJP proceedings is more complete than is the case for nonpunitive measures, but, by design, is less extensive than for courts-martial. Unlike courts-martial, NJP is nonadversarial in nature. When punishment is imposed it is not considered a conviction, and when a case is dismissed it is not considered an acquittal.

The word *mast* also is used to describe three different types of proceedings: request mast, meritorious mast, and disciplinary mast. Request mast is a hearing before the CO, at the request of a member, for making requests, reports, statements, and for airing grievances. Meritorious mast is for the purpose of publicly and officially commending a member of the command for noteworthy performance of duty. This chapter discusses disciplinary mast.

Mast is a procedure where the CO may (1) inquire into the facts surrounding minor offenses allegedly committed by a member of their command; (2) afford the accused a hearing as to the offense(s); and (3) dispose of such charges by dismissing the charges,

imposing punishment, or referring the case to a court-martial.

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### NATURE AND REQUIREMENTS FOR NONJUDICIAL PUNISHMENT (NJP)

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**LEARNING OBJECTIVES:** Identify who may impose NJP and persons on whom NJP may be imposed. Explain the right to trial by court-martial. Discuss punishments under Article 15, in terms of circumstances surrounding the offense, cases previously tried, and off-base offenses.

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Nonjudicial punishment is a disciplinary measure more serious than administrative corrective measures, but less serious than trial by court-martial. Nonjudicial punishment provides commanders with an essential and prompt means of maintaining good order and discipline and also promotes positive behavior changes in service members without the stigma of a court-martial conviction.

### WHO MAY IMPOSE

Authority to impose nonjudicial punishment under Article 15, UCMJ, may be exercised by a CO, an OIC, or by certain officers to whom the power has been delegated by the Secretary of the Navy (SECNAV).

In the Navy and Marine Corps, billet designations by the Bureau of Naval Personnel and Headquarters Marine Corps identify those persons who are COs. So the term *commanding officer* has a precise meaning and is not used arbitrarily.

An OIC is a commissioned officer appointed by departmental orders, tables of organization, manpower authorizations, orders of a flag or general officer in command, or orders of the senior officer present.

The power to impose NJP is inherent in the office and not in the individual. Thus, the power may be exercised by a person acting as CO, such as when the

CO is on leave and the executive officer (XO) succeeds to command.

Ordinarily, the power to impose NJP cannot be delegated. But one exception is when a flag or general officer delegates all or a portion of his or her Article 15 power to a principal assistant. A principal assistant is a senior officer on a flag or general officer's staff who is eligible to succeed to command. This delegation must be made with the express approval of the Chief of Naval Personnel or the Commandant of the Marine Corps.

Another exception exists when members of the naval service are assigned to a multiservice command. The commander of a multiservice command may appoint one or more naval units and for each unit designate a naval commissioned officer as CO for NJP purposes over the unit. A copy of such designation must be furnished to the Commander, Naval Military Personnel Command or the Commandant of the Marine Corps, as appropriate, and to the Judge Advocate General.

No officer may limit or withhold the exercise of any disciplinary authority under Article 15 by subordinate commanders without the specific authorization of SECNAV.

If a CO determines that his or her authority under Article 15 is not enough to make a proper disposition of the case, he or she may refer the case to a superior commander for appropriate disposition.

This referral situation could arise either when the CO's NJP powers are less extensive than those of the superior officer, or when the status of higher authority would add force to the punishment, as in the case of a letter of reprimand or admonition.

## **PERSONS SUBJECT TO NJP**

A CO may impose NJP on all military personnel of his or her command. An OIC may impose NJP only upon enlisted members assigned to his or her unit.

At the time punishment is imposed, the accused must be a member of the command of the CO (or of the unit of the OIC) who imposes the NJP. A person is "of the command or unit" if he or she is assigned or attached to it. This includes temporary additional duty (TAD) personnel. Personnel on TAD may be punished either by the OIC of the TAD unit to which they are assigned, or by the CO of the duty station to which they are permanently attached. Note, however, that both the OIC and the CO cannot punish an individual

under Article 15 for the same offense. In addition, a party to a *JAG Manual* investigation remains of the command or unit that he or she was attached to at the time of his or her designation as a party for the sole purpose of imposing a letter of admonition or reprimand as NJP.

## **Personnel of Another Armed Force**

Under present agreements between the armed forces, a Navy CO should not exercise NJP jurisdiction on Army or Air Force personnel assigned or attached to a naval command. As a matter of policy, these personnel should be returned to their parent service for discipline. If this is impractical and the need to discipline is urgent, NJP may be imposed, but a report to the Department of the Army or Department of the Air Force is required. See MILPERSMAN, Article 1860320.5a, 5b, for the procedures to follow.

Express agreements do not extend to Coast Guard personnel serving with a naval command, but as a matter of policy, the naval command should not try to exercise NJP over such personnel assigned to their unit. Refer to section 1-3(c), *Coast Guard Military Justice Manual*, COMDTINST M5801.1.

Because the Marine Corps is part of the Department of the Navy, no general restriction extends to the exercise of NJP by Navy commanders over Marine Corps personnel or by Marine Corps commanders over Navy personnel.

## **NJP of Embarked Personnel**

The CO or OIC of a unit attached to a ship should refrain from exercising his or her power to impose NJP and refer all such matters to the CO of the ship for disposition. This policy does not apply to Military Sealift Command (MSC) vessels operating under masters or to organized units embarked on a Navy ship for transportation only. Nevertheless, the CO of a ship may permit a CO or OIC of a unit attached to that ship to exercise nonjudicial punishment authority.

## **NJP of Reservists**

Reservists on active duty for training, and under some circumstances inactive duty for training, are subject to the UCMJ and are, therefore, subject to the imposition of NJP.

The offense(s) that the CO or OIC seeks to punish at NJP must have occurred while the member was on active duty or inactive duty training. However, it is not

necessary that NJP occur (or the offense even be discovered) before the end of the active duty or inactive duty training period during which the alleged misconduct occurred. When a CO imposes NJP on reservists, the following options apply:

- Impose NJP during the active duty or inactive duty training when the misconduct occurred
- Impose NJP at a later period of active duty or inactive duty training (not to exceed 2 years from the date of the offense)
- Request an involuntary recall of the accused to active duty or inactive duty training to impose NJP from the regular component officer exercising general court-martial jurisdiction over the accused
- Impose NJP after the period of active duty or inactive duty training, if the accused waives the right to be present at the NJP hearing

Punishment imposed on a person who was involuntarily recalled for imposition of NJP may not include restraint unless the SECNAV approves the recall.

### **Right to Trial by Court-Martial**

Article 15a, UCMJ, and part V, par. 3, MCM, 1984, provide another limitation on the exercise of NJP. Except for a person attached to or embarked in a vessel, an accused may demand trial by court-martial instead of NJP.

This right to refuse NJP exists up to the time of imposition of NJP (that is, up until the CO announces the punishment). This right is not waived by the accused having previously signed a report chit showing that he or she would accept NJP.

The category of persons who may not refuse NJP includes those persons assigned or attached to a vessel and those who are on board for passage, or assigned or attached to an embarked staff, unit, detachment, squadron, team, air group, or other regularly organized body.

The key time factor in determining whether or not a person has the right to demand trial by court-martial is the time of the imposition of the NJP and not the time of the commission of the offense. There is no provision for a CO or OIC to impose NJP on a civilian.

## **OFFENSES PUNISHABLE UNDER ARTICLE 15, UCMJ**

Article 15 gives a CO power to punish individuals for minor offenses. The term *minor offense* has been the cause of some concern in the administration of nonjudicial punishment.

Article 15, UCMJ, and part V, par. 1e, MCM, state that the term *minor offense* means misconduct normally not more serious than that usually handled at a summary court-martial (SCM) (where the maximum punishment is 30 days' confinement). These sources also say that the nature of the offense and the circumstances surrounding its commission are also factors that should be considered in determining whether an offense is minor in nature.

The term *minor offense* ordinarily does not include misconduct that, if tried by general court-martial (GCM), could be punished by a dishonorable discharge or confinement for more than 1 year. The Navy and Marine Corps, however, have taken the position that the final determination whether an offense is minor is within the sound discretion of the CO.

### **Maximum Penalty**

To determine if the offense is minor, begin the analysis with a consultation of punitive articles (part IV, MCM, 1984) and determine the maximum punishment for the offense. If the authorized confinement is 30 days to 3 months, the offense is most likely a minor offense, although the MCM does not specifically state this. If the authorized confinement is 6 months to a year, the offense may be minor. However, if authorized confinement is 1 year or more, the offense is usually not minor.

### **Circumstances Surrounding the Commission of an Offense**

The MCM, 1984, also points out that in determining whether an offense is minor, the nature of the offense and the circumstances surrounding its commission should be considered. This is a significant statement and often is misunderstood as referring to the seriousness or gravity of the offense. Gravity refers to the maximum punishment. In contrast, nature of the offense refers to its character, not its gravity.

In military criminal law, there are two basic types of misconduct: disciplinary infractions and crimes.

Disciplinary infractions are breaches of standards governing the routine functioning of society. Thus, traffic laws, license requirements, disobedience of military orders, and disrespect to a military superior are disciplinary infractions. Crimes, on the other hand, involve offenses recognized as particularly evil. Crimes are acts of robbery, rape, murder, aggravated assault, and larceny. Both types of offenses involve a lack of self-discipline, but crimes involve a particular gross absence of selfdiscipline amounting to a moral deficiency. Crimes are the product of a mind particularly disrespectful of good moral standards.

In most cases, criminal acts are not minor offenses. However, they are minor or serious depending upon the circumstances. And thus, while some disciplinary offenses carry severe maximum penalties, the law recognizes that the impact of some of these offenses on discipline will be slight.

The circumstances surrounding the commission of a disciplinary infraction are important to the determination of whether such an infraction is minor. For example, willful disobedience of an order to take ammunition to a unit engaged in combat can have fatal results for those engaged in the combat and is a serious matter. Willful disobedience of an order to report to the barbershop will have much less of an impact. The offense must provide both extremes, and it does because of a high maximum punishment limit.

When dealing with disciplinary infractions, the commander must be free to consider the impact of the circumstance since he or she is considered to be the best judge. However, in disposing of crimes, society at large has an interest coexistent with that of the command, and criminal defendants are given more safeguards. Therefore, the commander's discretion in disposing of disciplinary infractions is much greater than the latitude afforded when dealing with crimes.

The Navy has taken the position that the final determination of what is a minor offense is within the sound discretion of the CO. Imposition of NJP does not, in all cases, prevent a later court-martial for the same offense. See part V, par. 1e, MCM, 1984.

#### Cases Previously Tried in Civil Court

Although a member may have been previously tried in a civil court he or she may still be subject to military law. Sections 0108b and 0124c(2) of the *JAG Manual* permit the use of nonjudicial punishment to punish an accused for offenses in the following circumstances:

- When tried (whether acquitted or convicted) by a domestic or foreign civilian court
- When diverted out of the regular criminal process for a probationary period
- When adjudicated by juvenile court authorities. This is true only if authority is obtained from the officer exercising general court-martial jurisdiction.

NJP may not be imposed for an act tried by a court that derives its authority from the United States, such as a federal district court.

Cases in which a finding of guilt or innocence has been reached in a trial by court-martial cannot be taken to nonjudicial punishment.

#### Off-Base Offenses

COs and OICs may dispose of minor off-base disciplinary infractions at NJP. Unless the off-base offense is a traffic violation or one previously adjudicated by civilian authorities, there is no limit on the authority of military commanders to resolve such offenses at NJP.

In areas not under military control, the responsibility for maintaining law and order rests with civil authority. The enforcement of traffic laws falls within the purview of this principle. Off-duty, off-installation driving offenses, however, show inability and lack of safety consciousness. Such driving performance does not prevent the use of nonpunitive measures that could include denial of on-base driving privileges.

#### THE NJP PACKAGE

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*LEARNING OBJECTIVES:* List the functions of the Report and Disposition of Offenses, NAVPERS 1626/7. Explain how to properly complete the NAVPERS 1626/7.

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The NJP package includes numerous documents and forms along with any evidence pertaining to the case. Strict compliance with filling out the forms is essential to a proper nonjudicial punishment proceeding.

## REPORT AND DISPOSITION OF OFFENSE(S), NAVPERS 1626/7

Your office can receive notification that an offense has been committed in a variety of ways. These can include a shore patrol report, a verbal complaint by a victim, or a local report chit. Except when serious crimes are involved, charges are reduced to writing on the Report and Disposition of Offense(s), NAVPERS 1626/7, and processed in the manner prescribed by the form itself.

The NAVPERS 1626/7 is a one-sheet (back and front) form. It is not a substitute for a charge sheet and it is not a substitute for the pretrial investigation required by Article 32, UCMJ. However, so long as the offense(s) remains in the group of cases to be handled by the CO at mast, this one form satisfies most paper work requirements of a mast proceeding. Among the functions the NAVPERS 1626/7 serves are the following:

- It reports the offense(s).
- It records that the accused has been advised of his or her rights under Article 31, UCMJ.
- It records any premast restraint.
- It serves as a preliminary inquiry report.
- It records the action of the XO at screening mast.
- It records that the accused has been advised of the right to refuse NJP (if that right exists under the circumstances of the case).
- It shows the action of the CO at mast.
- It records that appeal rights have been explained to the accused.
- It becomes a permanent record of the case in the Unit Punishment Book (UPB). No additional record is needed, such as 3 x 5 cards or a mast logbook.

Remember, however, that the NAVPERS 1626/7 does not include all the required premast advice that must be given to the accused according to section 0109 of the *JAG Manual*.

Regardless of how the commission of a minor offense is brought to your attention, you will probably need to prepare the smooth NAVPERS 1626/7. Figure 6-1 illustrates a completed NAVPERS 1626/7. Let's

look at the information that you will place on this form.

## PREPARATION OF NAVPERS 1626/7

Referring to figure 6-1, section A, start with addressing the report to the OIC or CO of the accused. Fill in the date of the report. Type the accused's last name, first name, and middle initial. Type in the accused's social security number, present rate, and branch and class of service. Designate the department or division to which the accused is attached. Fill in the place of the offense. If there is more than one place, list all applicable places of the offense(s). Show the date of the commission of the offense. If there is more than one date, show all dates.

In the section entitled Details of the Offense, it is not mandatory that you type the offenses in the manner that you would on a charge sheet. However, this is good practice. If you always prepare a specification in full detail, you will not have to change it in the event the charges are referred to court-martial.

List military witnesses to the offense in order of seniority, followed by civilian witnesses, if any. If the witnesses are attached to the same command as the offender, it is only necessary to give the witness' division or department. If the witness is attached to another command, identify that command completely. If a witness is a civilian, give the complete address, business and home, if available. Finally, be sure to get the signature of the person placing the accused on report.

Section B of figure 6-1 shows the acknowledgement of the accused as having been informed of the nature of the accusation(s) against him or her and his or her right not to answer any questions relating to the offense. After the accused is formally informed of the accusations against him or her, this section should be signed by the accused and the person informing the accused of his or her right. If the accused refuses to sign this section, that fact must be witnessed by the person informing the accused of the accusations who will sign attesting to that fact.

Section C of figure 6-1 shows any premast restraint of the accused. If the accused is not being restricted, put the entry in the No Restrictions block. On the other hand, if the accused is placed on restriction pending investigation of the charges, you will either mark the Confined for Safekeeping block or the Restricted block. If the Restricted block is used, fill in the restricted to the limits of portion. Be sure to

**REPORT AND DISPOSITION OF OFFENSE(S)**  
**NAVPERS 1626/7 (REV. 8-81) S/M 0100-LF-016-2636**

To: Commanding Officer, NETPMSA, Pensacola, Florida Date of Report: 25 March 19CY

I hereby report the following named person for the offense(s) noted:

NAME OF ACCUSED	SERIAL NO	SOCIAL SECURITY NO	RATE / GRADE	BR. & CLASS	DN / DEPT
Seaman, Able B.		555-55-5555	BMSA	USN	Base Ops

PLACE OF OFFENSE (S)	DATE OF OFFENSE (S)
NETPMSA, Saufley Field, Pensacola, Florida	23 March 19CY

DETAILS OF OFFENSE (S) (Refer by article of UCMJ, if known. If unauthorized absence, give following info: time and date of commencement, whether over leave or liberty, time and date of apprehension or surrender and arrival on board, loss of ID card and and/or liberty card, etc.):

Charge: Violation of the Uniform Code of Military Justice, Article 121

Specification: In that Boatswain's Mate Seaman Apprentice Able B. Seaman, U.S. Navy NETPMSA, Saufley Field, Pensacola, Florida, on active duty, did, onboard Saufley Field, Pensacola, Florida, on or about 23 March 19CY, steal two \$50.00 bills, the property of BM3 Water T. Door, U.S. Navy.

NAME OF WITNESS	RATE / GRADE	DN / DEPT	NAME OF WITNESS	RATE / GRADE	DN / DEPT
Doe, Jane B.	Lt	OPS	Door, Water T.	BM3	OPS
Boat, Paul T.	BMC	OPS			
Pistol, Verv. C	MA1	511			

MAC, USN, Base Security Chief  
 (Rate/Grade/Title of person submitting report)

*Jack R. Frost*  
 Jack R. Frost  
 (Signature of person submitting report)

I have been informed of the nature of the of the accusation(s) against me. I understand and I do not have to answer any questions or make any statement regarding the offense(s) of which I am accused or suspected. However, I understand any statement made or questions answered by me may be used as evidence against me in event of trial by court-martial (Article 31 UCMJ).

Witness: *John A. Doe*  
 John A. Doe, ENS, USN  
 (Signature)

Acknowledged: *Able B. Seaman*  
 Able B. Seaman  
 (Signature of Accused)

PRE-MAST  
 RESTRAINT

☐ PRE TRIAL  
 CONFINEMENT

☐ RESTRICTED: You are restricted to the limits of \_\_\_\_\_

☒ NO RESTRICTIONS

\_\_\_\_\_ in lieu of arrest by order of the CO. Until your status as a restricted person is terminated by the CO, you may not leave the restricted limits except with the express permission of the CO or XO. You have been informed of the times and places which you are required to muster.

\_\_\_\_\_  
 (Signature and title of person imposing restraint)

\_\_\_\_\_  
 (Signature of Accused)

**INFORMATION CONCERNING ACCUSED**

CURRENT ENL. DATE	EXPIRATION CURRENT ENL. DATE	TOTAL ACTIVE NAVAL SERVICE	TOTAL SERVICE ON BOARD	EDUCATION	GCT	AGE
02 Jan 19CY	02 Jan 1994	3 years	18 months	12	54	22
MARITAL STATUS	NO. DEPENDENTS	CONTRIBUTION TO FAMILY OR QTRS ALLOWANCE (Amount required by law)		PAY PER MONTH (Including sea or foreign duty pay, if any)		
Married	5	N/A		\$1,250.20		

RECORD OF PREVIOUS OFFENSE (S) (Date, type, action taken, etc. Nonjudicial punishment incidents are to be included.)

19 June 1991

COs NJP

OFFENSE: Viol UCMJ Art. 92 - Failure to obey a lawful order on 16 June 1991.

NJP AWARDED: Restriction for a period of 14 days and extra duty for a period of 14 days

Figure6-1.—Report and Disposition of Offense(s), NAVPERS 1626/7.

PRELIMINARY INQUIRY REPORT																								
From: Commanding Officer To: ENS Floss A. Brush, USN, Supply Department				Date: 26 March 19CY																				
1. Transmitted herewith for preliminary inquiry and report by you, including, if appropriate in the interest of justice and discipline, the preferring of such charges as appear to you to be sustained by expected evidence.																								
REMARKS OF DIVISION OFFICER (Performance of duty, etc.) BMSA Seaman is a capable and conscientious worker. He has been experiencing financial difficulties which appear to have been the basis of this misconduct.																								
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 33%;">NAME OF WITNESS</th> <th style="width: 10%;">RATE/GRADE</th> <th style="width: 10%;">DIV/DEPT</th> <th style="width: 33%;">NAME OF WITNESS</th> <th style="width: 10%;">RATE/GRADE</th> <th style="width: 10%;">DIV/DEPT</th> </tr> </thead> <tbody> <tr> <td>Doe, Jane B.</td> <td>Lt</td> <td>OPS</td> <td>Pistol, Very C.</td> <td>MA1</td> <td>511</td> </tr> <tr> <td>Boat, Paul T.</td> <td>BMC</td> <td>OPS</td> <td>Door, Water T.</td> <td>BM3</td> <td>OPS</td> </tr> </tbody> </table>							NAME OF WITNESS	RATE/GRADE	DIV/DEPT	NAME OF WITNESS	RATE/GRADE	DIV/DEPT	Doe, Jane B.	Lt	OPS	Pistol, Very C.	MA1	511	Boat, Paul T.	BMC	OPS	Door, Water T.	BM3	OPS
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Doe, Jane B.	Lt	OPS	Pistol, Very C.	MA1	511																			
Boat, Paul T.	BMC	OPS	Door, Water T.	BM3	OPS																			
RECOMMENDATION AS TO DISPOSITION: <input type="checkbox"/> REFER TO COURT MARTIAL FOR TRIAL OF ATTACHED CHARGES (Complete Charge Sheet (DD Form 458) Through Page 2) <input checked="" type="checkbox"/> DISPOSE OF CASE AT MAST <input type="checkbox"/> NO PUNITIVE ACTION NECESSARY OR DESIRABLE <input type="checkbox"/> OTHER																								
COMMENT (Include data regarding availability of witnesses, summary of expected evidence, conflicts in evidence, if expected. Attach statements of witnesses, documentary evidence such as service record entries in U/A cases, items of real evidence, etc.) Summary of Evidence: Statements of LT Doe, BMC Boat, and MA1 Pistol (enclosures (1), (2), and (3)) state that they saw BMSA Seaman remove the money from the personal desk of BM3 Door. BMC Boat also states that he has personally counseled BMSA Seaman on numerous occasions concerning indebtedness and was aware that BMSA Seaman was experiencing money problems. In view of the seriousness of the offense, <u>Floss A. Brush</u> NJP is recommended. <span style="float: right;">(Signature of Investigating Officer) Floss A. Brush, ENS, USN</span>																								
ACTION OF EXECUTIVE OFFICER <input type="checkbox"/> DISMISSED <input checked="" type="checkbox"/> REFERRED TO CAPTAIN'S MAST <span style="float: right;">SIGNATURE OF EXECUTIVE OFFICER Mary N. Christmas, CDR, USN</span>																								
RIGHT TO DEMAND TRIAL BY COURT-MARTIAL (Not applicable to persons attached to or embarked in a vessel) I understand that nonjudicial punishment may not be imposed on me if, before the imposition of such punishment, I demand in lieu thereof trial by court-martial. I therefore (do) (do not) demand trial by court-martial.																								
G <span style="float: left;">SIGNATURE OF ACCUSED <u>Jack R. Frost</u> Jack R. Frost, MAC, USN</span> <span style="float: right;">SIGNATURE OF WITNESS <u>Able B. Seaman</u> Able B. Seaman, BMSA</span>																								
ACTION OF COMMANDING OFFICER <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> DISMISSED  <input type="checkbox"/> DISMISSED WITH WARNING (Not considered NJP)  <input type="checkbox"/> ADMONITION: ORAL/IN WRITING  <input type="checkbox"/> REPRIMAND: ORAL/IN WRITING  <input type="checkbox"/> REST TO _____ FOR _____ DAYS  <input type="checkbox"/> REST TO _____ FOR _____ DAYS WITH SUSP. FROM DUTY  <input type="checkbox"/> FORFEITURE: TO FORFEIT \$ _____ PAY PER NO. FOR _____ MO(S)  <input type="checkbox"/> DETENTION: TO HAVE &amp; _____ PAY PER MO. FOR (1, 2, 3) MO(S) DETAINED FOR _____ MO(S)             </div> <div style="width: 45%;"> <input type="checkbox"/> CONF. ON _____, 1, 2, OR 3 DAYS  <input checked="" type="checkbox"/> CORRECTIONAL CUSTODY FOR 30 DAYS  <input type="checkbox"/> REDUCTION TO NEXT INFERIOR PAY GRADE  <input checked="" type="checkbox"/> REDUCTION TO PAY GRADE OF E-1  <input type="checkbox"/> EXTRA DUTIES FOR _____ DAYS  <input type="checkbox"/> PUNISHMENT SUSPENDED FOR _____  <input type="checkbox"/> ART. 32 INVESTIGATION  <input type="checkbox"/> RECOMMENDED FOR TRIAL BY GCM  <input type="checkbox"/> AWARDED SPOM <input type="checkbox"/> AWARDED SCM             </div> </div>																								
DATE OF MAST: 02 April 19CY <span style="margin-left: 50px;">DATE ACCUSED INFORMED OF ABOVE ACTION: 02 April 19CY</span> <span style="float: right;">SIGNATURE OF COMMANDING OFFICER <u>Jon T. Boate</u> Jon T. Boate, CAPT, USN</span>																								
I It has been explained to me and I understand that if I feel this imposition of nonjudicial punishment to be unjust or disproportionate to the offenses charged against me, I have the right to immediately appeal my conviction to the next higher authority within XXXXXX 5 days. SIGNATURE OF ACCUSED: <u>Able B. Seaman</u> DATE: 02 April 19CY <span style="float: right;">I have explained the above rights of appeal to the accused. SIGNATURE OF WITNESS J. Doe, MA1, USN DATE: 02 April 19CY</span>																								
FINAL ADMINISTRATIVE ACTION <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">APPEAL SUBMITTED BY ACCUSED DATED: None</td> <td style="width: 50%;">FINAL RESULT OF APPEAL:</td> </tr> <tr> <td>FORWARDED FOR DECISION ON _____</td> <td></td> </tr> </table>							APPEAL SUBMITTED BY ACCUSED DATED: None	FINAL RESULT OF APPEAL:	FORWARDED FOR DECISION ON _____															
APPEAL SUBMITTED BY ACCUSED DATED: None	FINAL RESULT OF APPEAL:																							
FORWARDED FOR DECISION ON _____																								
J APPROPRIATE ENTRIES MADE IN SERVICE RECORD AND PAY ACCOUNT ADJUSTED WHERE REQUIRED DATE: 03 April 19CY <span style="margin-left: 100px;">(Initials)</span> <span style="float: right;">FILED IN UNIT PUNISHMENT BOOK DATE: 03 April 19CY <span style="margin-left: 100px;">(Initials)</span></span>																								
NAVPERS 1626/7 (REV. 8-81) (BACK)																								

Figure 6-1.—Report and Disposition of Offense(s), NAVPERS 1626/7—Continued.

## PRELIMINARY INQUIRY OFFICER'S REPORT

Name of Accused: \_\_\_\_\_

1. Read paragraph in MCM concerning offenses/charges Yes ☐
2. Witnesses interviewed (not the accused):

	(NAME)	(PHONE)	SIGNED STATEMENT ATTACHED	or	SUMMARY OF INTERVIEW ATTACHED
a.	_____	_____	<input type="checkbox"/>	or	<input type="checkbox"/>
b.	_____	_____	<input type="checkbox"/>	or	<input type="checkbox"/>
c.	_____	_____	<input type="checkbox"/>	or	<input type="checkbox"/>
d.	_____	_____	<input type="checkbox"/>	or	<input type="checkbox"/>
e.	_____	_____	<input type="checkbox"/>	or	<input type="checkbox"/>
f.	_____	_____	<input type="checkbox"/>	or	<input type="checkbox"/>

3. Accused's supervisor(s) interviewed:

a.	_____	_____	<input type="checkbox"/>	or	<input type="checkbox"/>
b.	_____	_____	<input type="checkbox"/>	or	<input type="checkbox"/>

4. Documentary evidence:

	(ORIG)		(COPY)/(ATTACHED)		(LOCATION)
a.	<input type="checkbox"/>	or	<input type="checkbox"/>	<input type="checkbox"/>	or _____
b.	<input type="checkbox"/>	or	<input type="checkbox"/>	<input type="checkbox"/>	or _____
c.	<input type="checkbox"/>	or	<input type="checkbox"/>	<input type="checkbox"/>	or _____
d.	<input type="checkbox"/>	or	<input type="checkbox"/>	<input type="checkbox"/>	or _____

5. Real evidence:

(DESCRIPTION)	(NAME OF CUSTODIAN)	(CUSTODIAN'S PHONE)
a.	_____	_____
b.	_____	_____

6. Permit the accused to inspect report chit - - - - - Yes \_\_\_\_ No \_\_\_\_
7. Accused initialed second page of charges (if any) - - - - N/A \_\_\_\_ Yes \_\_\_\_ No \_\_\_\_
8. Accused signed acknowledgement line of NAVPERS 1626/7 - - - Yes \_\_\_\_ No \_\_\_\_
9. Investigator signed witness line on NAVPERS 1626/7 - - - - - Yes \_\_\_\_ No \_\_\_\_
10. Accused waived his or her rights - - - - - Yes \_\_\_\_ No \_\_\_\_
11. Accused made statement (only when #10 is Yes), and
- a. ☐ The accused's signed statement is attached.
- b. ☐ The summary of investigation is attached.

Figure 6-2.—Sample preliminary inquiry officer's report.

get the signature and title of the person who is imposing the restraint.

Section D of figure 6-1 shows information about the accused. Get the accused's service record before filling this section out in order to verify all the information. In the section Record of Previous Offense(s), list all NJPs and courts-martial during the accused's current enlistment.

## PRE-MAST SCREENING

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**LEARNING OBJECTIVES:** Explain the preliminary inquiry. Identify the preheating advice and the forms used to document NJP screening. Describe the executive officer's screening process.

---

After you have completed the front of the NAVPERS 1626/7, the case must touch two more bases before it is ready for hearing by the CO. The first step is to refer the report chit to an officer or senior enlisted person for a preliminary inquiry that will later be screened by the XO.

## PRELIMINARY INQUIRY

At small commands cases are referred to division officers for the preliminary inquiry. At large commands the discipline officer or legal officer is delegated the authority to appoint the preliminary inquiry officer (PIO). You need to fill in the name of the PIO at the top of section E on figure 6-1 before referring it to the PIO for action.

It is not the job of the PIO to develop a case against the accused. Rather, the PIO is to collect all available facts about the offense itself and about the background of the accused. You should have a standard form that the PIO prepares for submission to the CO. Figure 6-2 is a good example of what should be included in a PIO's report.

When the accused wishes to waive his or her rights on self-incrimination and to make a statement, Suspect's Rights Acknowledgement/Statement (fig. 6-3) should be used. However, figure 6-3 is a suggested format and its use is not mandatory. You should provide the PIO with this form in case the accused desires to make a statement.

Now let's go back and look at the report chit. In addition to filling out a PIO's report the PIO completes

section E of the report chit (fig. 6-1) by doing the following:

- Inserting a short resume of the division officer's opinion of the accused
- Listing the names of the witnesses whose presence at mast is necessary to dispose of the case
- Recommending a disposition of the case
- Summarizing the evidence that supports the recommendation

The recommendation of the PIO is not binding on the CO.

After the PIO has completed his or her inquiry, the report chit, preliminary inquiry report, and all statements are sent to the CO for a determination of whether disposition by nonjudicial punishment is appropriate.

## PREHEARING ADVICE

If, after the preliminary inquiry, the CO determines that disposition by nonjudicial punishment is appropriate, the CO causes the accused to be given the advice outlined in part V, par. 4, MCM, 1984. The CO need not give the advice personally but may assign this responsibility to the legal officer, discipline officer, or another appropriate person. The advice that must be given includes the following:

- Contemplated action. This informs the accused that the CO is considering the imposition of nonjudicial punishment for the offense(s).
- Suspected offense(s). This describes the suspected offense(s) to the accused. The description should include the specific article(s) of the UCMJ that the accused is alleged to have violated.
- Government evidence. This advises the accused of the information that the allegations are based on. It also informs the accused that, upon request, he or she is allowed to examine all available statements and evidence.
- Right to refuse NJP. Unless the accused is attached to or embarked in a vessel (in which case he or she has no right to refuse NJP), this informs the accused of his or her right to demand trial by court-martial instead of nonjudicial punishment. The accused must also be informed of (1) the maximum punishment that can be awarded at nonjudicial punishment; (2) that if he or she demands trial by court-martial, referral of the

charges to trial by SCM, special court-martial (SPCM), or GCM is possible; (3) that he or she cannot be tried by SCM over his or her objection; and (4) at an SPCM or a GCM the accused has the right to representation by counsel.

● Right to confer with independent counsel. Because an accused who is not attached to or embarked in a vessel has the right to refuse NJP, this informs the accused of his or her right to confer with independent counsel about his or her decision to accept or refuse

<b>SUSPECT'S RIGHTS ACKNOWLEDGEMENT/STATEMENT</b> (See JAGMAN 0170)			
FULL NAME (ACCUSED/ SUSPECT)	SSN	RATE/RANK	SERVICE (BRANCH)
ACTIVITY/UNIT			DATE OF BIRTH
NAME (INTERVIEWER)	SSN	RATE/RANK	SERVICE (BRANCH)
ORGANIZATION		BILLET	
LOCATION OF INTERVIEW		TIME	DATE

  

**RIGHTS**

I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, he/she warned me that:

(1) I am suspected of having committed the following offense(s);

(2) I have the right to remain silent - - - - -

(3) Any statement I do make may be used as evidence against me in trial by court-martial; - - - - -

(4) I have the right to consult with lawyer counsel prior to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both; and

(5) I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview, - - - - -

Figure 6-3.—Suspect's rights acknowledgement/statement.

the NJP. This advice must be given to make sure the record of that NJP is admissible in evidence against the accused should he or she ever be tried by court-martial. A failure to advise an accused properly of his or her right to confer with counsel, or a failure to

provide counsel, will not, however, render the imposition of nonjudicial punishment invalid or make a ground for appeal. Therefore, if the command imposing the NJP desires that the record of the NJP be admissible for court-martial purposes, you must

**WAIVER OF RIGHTS**

I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that, -----

(1) I expressly desire to waive my right to remain silent; -----

(2) I expressly desire to make a statement; -----

(3) I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to questioning; -----

(4) I expressly do not desire to have such a lawyer present with me during this interview; and -----

(5) This acknowledgement and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me. -----

SIGNATURE (ACCUSED/SUSPECT)	TIME	DATE
SIGNATURE (INTERVIEWER)	TIME	DATE
SIGNATURE (WITNESS)	TIME	DATE

The statement which appears on this page (and the following \_\_\_\_ page(s), all of which are signed by me), is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

\_\_\_\_\_  
SIGNATURE (ACCUSED/SUSPECT)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Figure 6-3.—Suspect’s rights acknowledgement/statement—Continued.

prepare the record of the NJP according to applicable service regulations and reflect the following:

The accused was advised of his or her right to confer with counsel.

The accused either exercised his or her right to confer with counsel or made a knowing, intelligent, and voluntary waiver of this right.

The accused knowingly, intelligently, and voluntarily waived his or her right to refuse NJP. All such waivers must be in writing.

● **Hearing rights.** The accused is entitled to appear personally before the CO for the nonjudicial punishment hearing if he or she did not demand trial by court-martial or if the right to demand trial by court-martial is not applicable. At such a hearing the accused is entitled to the following:

Be informed of he or her rights under Article 31, UCMJ.

Be accompanied by a spokesperson provided by, or arranged for, the member. (The proceedings should not be unduly delayed to permit the presence of the spokesperson, nor is the spokesperson entitled to travel or similar expenses).

Be informed of the evidence against them relating to the offense.

Be allowed to examine all evidence that the CO will rely on in deciding whether and how much nonjudicial punishment to impose.

Present matters in defense, extenuation, and mitigation, orally, in writing, or both.

Have witnesses present. These witnesses can include those adverse to the accused, upon request, if (a) their statements will be relevant, (b) they are reasonably available, (c) their appearance will not require reimbursement by the government, (d) their appearance will not unduly delay the proceedings or, in the case of a military witness, (e) will not necessitate their being excused from other important duties.

Have the proceedings open to the public unless the CO determines that the proceedings should be closed.

## FORMS

The status of the accused determines the form that you must use to record that the accused was informed of his or her prehearing rights.

Figures 6-4, 6-5, and 6-6, Accused's Notification and Election of Rights, also illustrated in appendixes A-1-b, A-1-c, and A-1-d of the *JAG Manual*, comply with the previous requirements of prehearing advice to the accused.

Use appendix A-1-b, figure 6-4, when the accused is attached to or embarked in a vessel.

Use appendix A-1-c, figure 6-5, when an accused is not attached to or embarked in a vessel, and the command does not afford the accused the right to consult with a lawyer to assist the accused in deciding whether to accept or reject NJP. In this case the record of nonjudicial punishment will not be admissible for any purpose at any later court-martial.

Use appendix A-1-d, figure 6-6, when an accused is not attached and to or embarked in a vessel, and the command affords the accused the right to consult with a lawyer before deciding whether to accept or reject nonjudicial punishment.

Use and retention of the proper form are essential. Whatever form you use, attach it to the NAVPERS 1626/7 and retained it in the command's UPB.

In the event punishment is imposed at captain's mast, and appendix A-1-d, figure 6-6, is used, or the accused is represented by a lawyer at the hearing, you will need to document the Booker rights advice on a page 13 of the member's service record book. This is necessary because appendix A-1-d, figure 6-6, stays in the command UPB. If the member transfers out of the area and is later charged with offenses that are referred to a court-martial, the trial counsel can prove Booker rights advice was given with the page 13. As an example, the page 13 should state the following:

(Grade and name of accused) signed JAG *Manual* appendix A-1-d, before to his or her captain's mast which was held on (date of captain's mast). The accused [talked to a lawyer before deciding whether to demand trial by court-martial instead of captain's mast] [gave up his or her right to talk to a lawyer before to deciding whether to demand trial by court-martial instead of captain's mast]. The accused was advised that acceptance of nonjudicial punishment does not prevent

**(CAPTAIN'S MAST) (OFFICE HOURS)**  
**ACCUSED'S NOTIFICATION AND ELECTION OF RIGHTS**  
**ACCUSED ATTACHED TO OR EMBARKED IN A VESSEL**  
(See JAGMAN 0109)

Notification and election of rights concerning the contemplated imposition of nonjudicial punishment in the case of \_\_\_\_\_, SSN \_\_\_\_\_, assigned or attached to \_\_\_\_\_.

NOTIFICATION

1. In accordance with the requirements of paragraph 4 of Part V, MCM, 1984, you are hereby notified that the commanding officer is considering imposing nonjudicial punishment on you because of the following alleged offenses:

**(Note:** Here describe the offenses, including the UCMJ article(s) allegedly violated.)

2. The allegations against you are based on the following information:

**(Note:** Here provide a brief summary of that information.)

3. You may request a personal appearance before the commanding officer or you may waive this right.

a. Personal appearance waived. If you waive your right to appear personally before the commanding officer, you will have the right to submit any written matters you desire for the commanding officer's consideration in determining whether or not you committed the offenses alleged, and, if so, in determining an appropriate punishment. You are hereby informed that you have the right to remain silent and that anything you do submit for consideration may be used against you in a trial by court-martial.

b. Personal appearance requested. If you exercise your right to appear personally before the commanding officer, you shall be entitled to the following rights at the proceeding:

(1) To be informed of your rights under Article 31(b), UCMJ;

(2) To be informed of the information against you relating to the offenses alleged;

(3) To be accompanied by a spokesperson provided or arranged for by you. A spokesperson is not entitled to travel or similar expenses, and the proceedings will not be delayed to permit the presence of a spokesperson. The spokesperson may speak on your behalf, but may not question witnesses except as the commanding officer may permit as a matter of discretion. The spokesperson need not be a lawyer;

(4) To be permitted to examine documents or physical objects against you that the commanding officer has examined in the case and on which the commanding officer intends to rely in deciding whether and how much nonjudicial punishment to impose;

(5) To present matters in defense, extenuation, and mitigation orally, in writing, or both;

Figure 6-4.—Accused's notification and election of rights - accused attached to or embarked in a vessel.

(6) To have witnesses attend the proceeding, including those that may be against you, if their statements will be relevant and they are reasonably available. A witness is not reasonably available if the witness requires reimbursement by the United States for any cost incurred in appearing, cannot appear without unduly delaying the proceedings, or if a military witness, cannot be excused from other important duties; and

(7) To have the proceedings open to the public unless the commanding officer determines that the proceedings should be closed for good cause. However, this does not require that special arrangements be made to facilitate access to the proceedings.

#### ELECTION OF RIGHTS

4. Knowing and understanding all of my rights as set forth in paragraphs 1 through 3 above, my desires are as follows:

a. Personal appearance. (Check one)

\_\_\_\_\_ I request a personal appearance before the commanding officer.

\_\_\_\_\_ I waive a personal appearance. (Check one)

\_\_\_\_\_ I do not desire to submit any written matters for consideration.

\_\_\_\_\_ Written matters are attached.

**(Note:** The accused's waiver of personal appearance does not preclude the commanding officer from notifying the accused, in person, of the punishment imposed.)

b. Election at personal appearance. (Check one or more)

\_\_\_\_\_ I request that the following witnesses be present at my nonjudicial punishment proceeding:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ I request that my nonjudicial punishment proceeding be open to the public.

\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Signature of accused)

\_\_\_\_\_  
(Name of witness)

\_\_\_\_\_  
(Name of accused)

Figure 6-4.—Accused's notification and election of rights - accused attached to or embarked in a vessel—Continued.

**(CAPTAIN'S MAST) (OFFICE HOURS)**  
**ACCUSED'S NOTIFICATION AND ELECTION OF RIGHTS**  
**ACCUSED NOT ATTACHED TO OR EMBARKED IN A VESSEL**  
**RECORD CANNOT BE USED IN AGGRAVATION IN EVENT OF LATER**  
**COURT-MARTIAL UNLESS LAWYER SERVES AS PERSONAL REPRESENTATIVE**  
(See JAGMAN 0109)

Notification and election of rights concerning the contemplated imposition of nonjudicial punishment in the case of \_\_\_\_\_, SSN \_\_\_\_\_, assigned or attached to \_\_\_\_\_.

NOTIFICATION

1. In accordance with the requirements of paragraph 4 of Part V, MCM, 1984, you are hereby notified that the commanding officer is considering imposing nonjudicial punishment on you because of the following alleged offenses:

**(Note:** Here describe the offenses, including the UCMJ article(s) allegedly violated.)

2. The allegations against you are based on the following information:

**(Note:** Here provide a brief summary of that information.)

3. You have the right to refuse imposition of nonjudicial punishment. If you refuse nonjudicial punishment, charges could be referred for trial by court-martial by summary, special, or general court-martial. If charges are referred to trial by summary court-martial, you may not be tried by summary court-martial over your objection. If charges are referred to a special or general court-martial, you will have the right to be represented by counsel. The maximum punishment that could be imposed if you accept nonjudicial punishment is:

---

4. If you decide to accept nonjudicial punishment, you may request a personal appearance before the commanding officer or you may waive this right.

a. Personal appearance waived. If you waive your right to appear personally before the commanding officer, you will have the right to submit any written matters you desire for the commanding officer's consideration in determining whether or not you committed the offenses alleged, and, if so, in determining an appropriate punishment. You are hereby informed that you have the right to remain silent and that anything you do submit for consideration may be used against you in a trial by court-martial.

b. Personal appearance requested. If you exercise your right to appear personally before the commanding officer, you shall be entitled to the following rights at the proceeding:

(1) To be informed of your rights under Article 31(b), UCMJ;

(2) To be informed of the information against you relating to the offenses alleged;

(3) To be accompanied by a spokesperson provided or arranged for by you. A spokesperson is not entitled to travel or similar expenses, and the proceedings will not be delayed to permit the presence of a spokesperson. The spokesperson may speak on your behalf, but may not question witnesses except as the commanding officer may permit as a matter of discretion. The spokesperson need not be a lawyer;

(4) To be permitted to examine documents or physical objects against you that the commanding officer has examined in the case and on which the commanding officer intends to rely in deciding whether and how much nonjudicial punishment to impose;

Figure 6-5.—Accused's notification and election of rights - accused NOT attached to or embarked in a vessel. Record CANNOT be used in aggravation in event of later court-martial unless lawyer served as personal representative.

(5) To present matters in defense, extenuation, and mitigation orally, in writing, or both;

(6) To have witnesses attend the proceeding, including those that may be against you, if their statements will be relevant and they are reasonably available. A witness is not reasonably available if the witness requires reimbursement by the United States for any cost incurred in appearing, cannot appear without unduly delaying the proceedings, or if a military witness, cannot be excused from other important duties; and

(7) To have the proceedings open to the public unless the commanding officer determines that the proceedings should be closed for good cause. However, this does not require that special arrangements be made to facilitate access to the proceedings.

#### ELECTION OF RIGHTS

5. Knowing and understanding all of my rights as set forth in paragraphs 1 through 4 above, my desires are as follows:

a. Right to refuse nonjudicial punishment. (Check one)

\_\_\_\_\_ I refuse nonjudicial punishment

\_\_\_\_\_ I accept nonjudicial punishment

**(Note:** If the accused does not accept nonjudicial punishment, the matter should be submitted to the commanding officer for disposition.)

b. Personal appearance. (Check one)

\_\_\_\_\_ I request a personal appearance before the commanding officer.

\_\_\_\_\_ I waive a personal appearance. (Check one)

\_\_\_\_\_ I do not desire to submit any written matters for consideration.

\_\_\_\_\_ Written matters are attached.

**(Note:** The accused's waiver of personal appearance does not preclude the commanding officer from notifying the accused, in person, of the punishment imposed.)

c. Election at personal appearance. (Check one or more)

\_\_\_\_\_ I request that the following witnesses be present at my nonjudicial punishment proceeding:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ I request that my nonjudicial punishment proceeding be open to the public.

\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Signature of accused)

\_\_\_\_\_  
(Name of witness)

\_\_\_\_\_  
(Name of accused)

Figure 6-5.—Accused's notification and election of rights - accused NOT attached to or embarked in a vessel. Record CANNOT be used in aggravation in event of later court-martial unless lawyer served as personal representative—Continued.

**(CAPTAIN'S MAST) (OFFICE HOURS)**  
**ACCUSED'S NOTIFICATION AND ELECTION OF RIGHTS**  
**ACCUSED NOT ATTACHED TO OR EMBARKED IN A VESSEL**  
**RECORD MAY BE USED IN AGGRAVATION IN EVENT OF LATER COURT-MARTIAL**  
(See JAGMAN 0109)

Notification and election of rights concerning the contemplated imposition of nonjudicial punishment in the case of \_\_\_\_\_, SSN \_\_\_\_\_, assigned or attached to \_\_\_\_\_.

NOTIFICATION

1. In accordance with the requirements of paragraph 4 of Part V, MCM, 1984, you are hereby notified that the commanding officer is considering imposing nonjudicial punishment on you because of the following alleged offenses:

(**Note:** Here describe the offenses, including the UCMJ article(s) allegedly violated.)

2. The allegations against you are based on the following information:

(**Note:** Here provide a brief summary of that information.)

3. You have the right to refuse imposition of nonjudicial punishment. If you refuse nonjudicial punishment, charges could be referred for trial by court-martial by summary, special, or general court-martial. If charges are referred to trial by summary court-martial, you may not be tried by summary court-martial over your objection. If charges are referred to a special or general court-martial, you will have the right to be represented by counsel. The maximum punishment that could be imposed if you accept nonjudicial punishment is:

---

4. If you decide to accept nonjudicial punishment, you may request a personal appearance before the commanding officer or you may waive this right.

a. Personal appearance waived. If you waive your right to appear personally before the commanding officer, you will have the right to submit any written matters you desire for the commanding officer's consideration in determining whether or not you committed the offenses alleged, and, if so, in determining an appropriate punishment. You are hereby informed that you have the right to remain silent and that anything you do submit for consideration may be used against you in a trial by court-martial.

b. Personal appearance requested. If you exercise your right to appear personally before the commanding officer, you shall be entitled to the following rights at the proceeding:

(1) To be informed of your rights under Article 31(b), UCMJ;

(2) To be informed of the information against you relating to the offenses alleged;

(3) To be accompanied by a spokesperson provided or arranged for by you. A spokesperson is not entitled to travel or similar expenses, and the proceedings will not be delayed to permit

Figure 6-6.—Accused's notification and election of rights - accused NOT attached to or embarked in a vessel. Record MAY be used in aggravation in event of later court-martial.

the presence of a spokesperson. The spokesperson may speak on your behalf, but may not question witnesses except as the commanding officer may permit as a matter of discretion. The spokesperson need not be a lawyer;

(4) To be permitted to examine documents or physical objects against you that the commanding officer has examined in the case and on which the commanding officer intends to rely in deciding whether and how much nonjudicial punishment to impose;

(5) To present matters in defense, extenuation, and mitigation orally, in writing, or both;

(6) To have witnesses attend the proceeding, including those that may be against you, if their statements will be relevant and they are reasonably available. A witness is not reasonably available if the witness requires reimbursement by the United States for any cost incurred in appearing, cannot appear without unduly delaying the proceedings, or if a military witness, cannot be excused from other important duties; and

(7) To have the proceedings open to the public unless the commanding officer determines that the proceedings should be closed for good cause. However, this does not require that special arrangements be made to facilitate access to the proceedings.

5. In order to help you decide whether or not to demand trial by court-martial or to exercise any of the rights explained above should you decide to accept nonjudicial punishment, you may obtain the advice of a lawyer prior to any decision. If you wish to talk to a lawyer, a military lawyer will be made available to you, either in person or by telephone, free of charge, or you may obtain advice from a civilian lawyer at your own expense.

#### ELECTION OF RIGHTS

6. Knowing and understanding all of my rights as set forth in paragraphs 1 through 5 above, my desires are as follows:

a. Lawyer: (Check one or more, as applicable)

\_\_\_\_\_ I wish to talk to a military lawyer before completing the remainder of this form.

\_\_\_\_\_ I wish to talk to a civilian lawyer before completing the remainder of this form.

\_\_\_\_\_ I hereby voluntarily, knowingly, and intelligently give up my right to talk to a lawyer.

\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Signature of accused/date)

Figure 6-6.—Accused's notification and election of rights - accused NOT attached to or embarked in a vessel. Record MAY be used in aggravation in event of later court-martial—Continued.

**(Note:** If the accused wished to talk to a lawyer, the remainder of this form shall not be completed until the accused has been given a reasonable opportunity to do so.)

\_\_\_\_\_ I talked to \_\_\_\_\_, a lawyer, on \_\_\_\_\_.

\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Signature of accused/date)

b. Right to refuse nonjudicial punishment. (Check one)

\_\_\_\_\_ I refuse nonjudicial punishment

\_\_\_\_\_ I accept nonjudicial punishment

**(Note:** If the accused does not accept nonjudicial punishment, the matter should be submitted to the commanding officer for disposition.)

c. Personal appearance. (Check one)

\_\_\_\_\_ I request a personal appearance before the commanding officer.

\_\_\_\_\_ I waive a personal appearance. (Check one)

\_\_\_\_\_ I do not desire to submit any written matters for consideration

\_\_\_\_\_ Written matters are attached.

**(Note** The accused's waiver of personal appearance does not preclude the commanding officer from notifying the accused, in person, of the punishment imposed.)

d. Election at personal appearance. (Check one or more)

\_\_\_\_\_ I request that the following witnesses be present at my nonjudicial punishment proceeding:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ I request that my nonjudicial punishment proceeding be open to the public.

\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Signature of accused)

\_\_\_\_\_  
(Name of witness)

\_\_\_\_\_  
(Name of accused)

Figure 6-6.—Accused's notification and election of rights - accused NOT attached to or embarked in a vessel. Record MAY be used in aggravation in event of later court-martial—Continued.

further administrative action. In completing the remainder of the form, the accused did not demand trial by court-martial instead of captain's mast.

If the accused is represented by a military or civilian lawyer as a personal representative at his or her captain's mast, the following example should be made on a page 13:

(Grade and name of accused) received punishment at captain's mast on (date). The accused was represented by a lawyer.

If the member refuses to sign the forms, simply record that you advised him or her of his or her rights but the member declined to sign the forms. Note that the member must demand trial by court-martial and if he or she fails to make such a demand, the command may proceed with nonjudicial punishment. Once all preheating advice is given, the accused is ready for XO's screening.

#### **EXECUTIVE OFFICER'S (XO'S) SCREENING**

The XO may screen a case by holding an informal hearing or may merely review the record of the accused and the report chit. If the XO has been given the power by the CO, he or she may dismiss the case, but may NEVER impose punishment.

At XO's screening mast the accused is advised again of the right to refuse NJP and demand a trial by court-martial. At this point section G of figure 6-1 can be signed by the accused if it was not signed before. Be sure to get the witness' signature in this section also.

Remember Article 15, UCMJ, does not give the right to refuse NJP to persons attached to vessels. Also remember that an accused not attached to or embarked in a vessel may elect at any time before imposition of NJP to refuse it and demand a court-martial. It is possible for an accused to elect not to demand trial by court-martial at XO's screening but later at captain's mast demand it provided it is before punishment is imposed.

Once the XO has conducted an inquiry, he or she has the option of referring the case to mast or dismissing it. The XO fills in section F of figure 6-1 annotating the action he or she has taken. If the case is referred to the CO for mast, a formal hearing is set up. Note that sections H, I, and J of figure 6-1 is for

the action of the CO, the accused's right of appeal, and the final administrative action, respectively.

#### **THE NJP HEARING PROCEDURE**

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*LEARNING OBJECTIVES:* Describe the requirements for NJP hearing procedure. Explain some of the possible actions by the CO at mast.

---

The CO decides when and where a captain's mast will be held. The XO, legal officer, or discipline officer normally assists the CO. As an MA, you will be present to keep order and call the accused to mast. You will also provide any additional documents needed by the CO.

While local practices will come into play as far as setting up the mast and the formalities required, figure 6-7, appendix A-1-e of the *JAG Manual* is the official guide for the nonjudicial punishment proceedings.

#### **HEARING REQUIREMENTS**

Except as noted below, nonjudicial punishment cases must be handled at a hearing at which the accused is allowed to exercise the foregoing rights. In addition, there are other technical requirements about the hearing and the exercise of the accused's rights.

##### **Personal Appearance Waived**

An accused may waive his or her right to appear personally before the CO, and may submit a written explanation for consideration by the CO before NJP is imposed. If the accused makes this election, make sure the accused is informed of the right to remain silent and that any matters submitted may be used at trial by court-martial.

Notwithstanding the accused's expressed desire to waive his or her right to appear personally at the nonjudicial punishment hearing, the accused may be ordered to attend the hearing if the officer imposing nonjudicial punishment desires his or her presence. If the accused waives his or her personal appearance and NJP is imposed, the CO must make sure the accused is informed of the punishment as soon as possible. For more information on this topic see part V, par. 4c(2), MCM, 1984.

## CAPTAIN'S MAST GUIDE

**(NOTE:** The formalities prior to and at the termination of the captain's mast normally are determined by customs and tradition of the Navy.)

**CO:** You are suspected of committing the following violation(s) of the Uniform Code of Military Justice:

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You do not have to make any statement regarding the offense(s) of which you are accused or suspected and any statement made by you may be used as evidence against you.

**(Note:** If it is reasonably foreseeable that the accused's statements during the captain's mast proceedings may be considered for introduction in evidence at a later court-martial, an explanation of rights and a waiver, in the format of appendix A-1-m of the JAG Manual, will have to be obtained from the accused, during the hearing, before proceeding further.)

**CO:** You are advised that a captain's mast is not a trial and that a determination of misconduct on your part is not a conviction by a court. Further, you are advised that the formal rules of evidence used in trials by court-martial do not apply at captain's mast.

**CO:** I have a statement signed by you acknowledging that you were fully advised of your legal rights pertaining at this hearing. **(Note:** This statement will be either JAGMAN, appendix A-1-b, A-1-c, or A-1-d.)

**CO:** Do you understand this statement and do you understand the rights explained therein?

**ACC:** \_\_\_\_\_

**CO:** Do you have any questions about them or do you wish to make any requests?

**ACC:** \_\_\_\_\_

**CO:** [To witness (if any are present)] What can you tell me about the accused's involvement in (these) (this) offense(s)?

**WIT:** \_\_\_\_\_

**CO:** [To witness who has/have previously provided written statement(s) when accused and CO both have copies of the state merit(s).] Do you adopt your statement(s) as your testimony here today?

**ACC:** \_\_\_\_\_

Figure 6-7.—Captain's mast guide.

<b>CO:</b>	Do you have anything to add to or change in your statement?
<b>WIT:</b>	_____
<b>CO:</b>	(To accused) Would you like me to ask any further questions of this witness?
<b>ACC:</b>	_____
<b>CO:</b>	(After all witnesses are questioned) I have before me the following (documents) (statements) (other physical evidence) that will be considered by me. Have you been given the opportunity to examine them?
<b>ACC:</b>	_____
<b>CO:</b>	(If there is a “no,” offer the accused the opportunity to examine the evidence.)
<b>CO:</b>	Is there anything that you wish to offer? (If the answer is “yes,” permit the accused the opportunity to call his or her witnesses, make a personal statement in defense, and present other evidence.)
<b>ACC:</b>	_____
<b>CO:</b>	Are there any other witnesses you would like to call or any other evidence you would like to present?
<b>ACC:</b>	_____
<b>CO:</b>	(To witness) What can you tell me about (accused’s name) performance of duty?
<b>WIT:</b>	_____
<b>CO:</b>	(To accused) Is there anything else you would like to present?
<b>ACC:</b>	_____
<b>CO:</b>	I impose the following punishment: _____
	My decision to impose this punishment was based on my determination that you committed the minor offenses of _____
	You are advised that you have the right to appeal this punishment to (identify the superior authority by name and organizational title). You appeal must be made within a reasonable time—which is normally 5 days. Following this hearing _____ will advise you more fully of this right to appeal. Do you understand?
<b>ACC:</b>	_____
<b>CO:</b>	You are dismissed.

Figure 6-7.—Captain’s mast guide—Continued.

## Hearing Officer

Normally, the officer who actually holds the nonjudicial punishment hearing is the CO of the accused. COs or OICs are allowed to delegate their authority to hold the hearing to another officer under extraordinary circumstances. These circumstances must be unusual and significant rather than matters of convenience to the commander. This delegation of authority should be in writing and detailed reasons given. This delegation, however, does not include the authority to impose punishment. At such a hearing, the officer delegated to hold the hearing will receive all evidence, prepare a summarized record of matters considered, and send the record to the officer having nonjudicial punishment authority.

## Burden of Proof

The CO must decide that the accused is “guilty” by a preponderance of the evidence. *Black’s Law Dictionary* defines preponderance of evidence as “evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it. . .”

## Personal Representative

The accused is responsible for getting a person to represent him or her at NJP. As a practical matter, the accused is free to choose anyone—a lawyer or nonlawyer, an officer or an enlisted person. The freedom of the accused to choose a representative does not compel the command to provide lawyer counsel, and current regulations do not create a right to counsel at NJP, whereas such a right does exist at a court-martial.

Representation by any lawyer who is willing and able to appear at the hearing on behalf of the accused is authorized. While a lawyer’s workload may prevent the lawyer from appearing, a blanket rule that no lawyers can appear at Article 15 hearings would appear to contravene the spirit if not the letter of the law. It is likewise doubtful that a lawyer can lawfully be ordered to represent the accused. It is fair to say that the accused can have anyone who is able and willing to appear without cost to the government. While a command does not have to provide a personal representative, it should help the accused get the representative he or she wants. In this connection, if the accused desires a personal representative, allow him or her a reasonable time to get someone. Use good

judgment here, for such a period should be neither too short nor too long.

## Witnesses

When the hearing involves controverted questions of fact about the alleged offenses, witnesses should be available to testify if they are present on the same ship or base or are otherwise available at no expense to the government. Thus, in a larceny case, if the accused denies wrongdoing, the witnesses who can testify that an offense was committed should be called to testify in person if they are available at no cost to the government. It should be noted, however, that no authority exists to subpoena civilian witnesses for an NJP proceeding.

## Public Hearing

The accused is entitled to have the hearing open to the public unless the CO determines that the proceeding should be closed for good cause. The CO is not required to make any special arrangements to facilitate public access to the proceedings.

## Publication of NJP Results

Authority to publish the results of nonjudicial punishment is granted by section 0115 of the *JAG Manual*. You may publish the name, rate, offense(s), and disposition of the offender in the plan of the day (POD). Publish the results not later than 1 month after the imposition of nonjudicial punishment. If the NJP is appealed, publish the results not later than 1 month after the date the appeal is denied. If the POD is distributed to military personnel only, you may include all the details stated previously. If the POD is distributed to other than military personnel, nonjudicial punishment results may be published without the name of the accused.

## POSSIBLE ACTIONS BY THE CO AT MAST

Dismissal with or without warning. This action is taken if the CO is not convinced by the evidence that the accused is guilty of an offense, or decides that no punishment is appropriate in light of the accused’s record and other circumstances. Dismissal, whether with or without a warning, is not considered NJP, nor is it considered an acquittal.

Referral to an SCM, SPCM, or a pretrial investigation under Article 32, UCMJ. The CO may in his or her sole discretion, refer the charge(s) to either

an SCM, an SPCM or an Article 32 investigation. This will of course, depend upon the severity of the charges.

Postponement of action. The CO may postpone any action on the nonjudicial punishment pending further investigation or for other good cause, such as a pending trial by civil authorities for the same offense.

Imposition of NJP. The CO may impose nonjudicial punishment and award any of the authorized punishments outlined in part V, par. 5, MCM.

## AUTHORIZED PUNISHMENTS

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*LEARNING OBJECTIVES:* Describe the limitations, the nature, and the execution of NJP punishments. Differentiate between authorized and unauthorized combinations of NJP punishments.

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If the CO is convinced by the evidence that the accused is guilty of the offense(s) and he or she deems punishment is proper, the CO has wide latitude to impose punishment. There are, however, limitations that are placed on the CO based upon his or her rank and the status of the accused.

## LIMITATIONS

The maximum punishment that can be awarded in any Article 15, UCMJ, case is limited by several factors that include the following:

- The grade of the imposing officer. COs in grades O-4 to O-6 have greater punishment powers than officers in grades O-1 to O-3. Flag officers, general officers, and officers exercising general court-martial jurisdiction have greater punishment authority than COs in grades O-4 to O-6.
- The status of the imposing officer. Regardless of the rank of an OIC, his or her punishment power is limited to that of COs in grades O-1 to O-3. The punishment powers of a CO are commensurate with his or her permanent grade.
- The status of the accused. Punishment authority is also limited by the status of the accused. Is the accused an officer or an enlisted person attached to or embarked in a vessel?

Maximum punishment limitations apply to each NJP action and not to each offense. Note that there is

a policy that all known offenses that the accused is suspected of should ordinarily be considered at a single Article 15 hearing. Table 6-1 summarizes the maximum punishment limitations for nonjudicial punishment.

## NATURE OF THE PUNISHMENT

There are eight specific types of punishment that may, under proper circumstances, be imposed as nonjudicial punishment. Remember, there are limitations based upon the COs rank and the status of the offender. Refer to table 6-1 as you read the following discussion of individual punishments.

### Admonition and Reprimand

Admonition and reprimand are two forms of censure intended to express adverse reflection upon or criticism of a person's conduct. A reprimand is a more severe form of censure than an admonition. When imposed as nonjudicial punishment, the admonition or reprimand is considered to be punitive, unlike the nonpunitive admonition and reprimand. Punitive censure for officers must be in writing, although it may be either oral or written for enlisted personnel. Procedures for issuing punitive letters are detailed in section 0114 of the *JAG Manual*. A sample punitive letter of reprimand is shown in appendixes A-1-g of the *JAG Manual*.

### Arrest in Quarters

This punishment is for officers only. It is a moral restraint, as opposed to a physical restraint. It is similar to restriction, but has much narrower limits. The limits of arrest are set by the officer imposing the punishment and may extend beyond quarters. The term *quarters* includes military and private residences. The officer may be required to perform regular duties as long as the duties do not involve the exercise of authority over subordinates.

### Restriction

Restriction is the least severe form of liberty deprivation. Restriction involves moral rather than physical restraint. The severity of this type of restraint depends on its duration and the geographical limits specified when the punishment is imposed. A person undergoing restriction may be required to report to a designated place at specified times if reasonably

necessary to make sure the punishment is being properly executed.

Restriction ashore means that an accused will be restricted to the limits of the command except, of course, at larger shore stations where the use of recreational facilities might be further governed. Restriction and arrest in quarters are normally imposed by a written order detailing the limits thereof and usually require the accused to log in at certain specified times during the restraint. Article 1103 of *U.S. Navy Regulations*, 1990, provides that an officer placed in the status of arrest or restriction will not be confined to quarters unless the safety or the discipline of the ship requires such action.

## Forfeiture

Forfeiture means a permanent lost of pay. A forfeiture applies to basic pay and to sea or foreign duty pay, but not to incentive pay or allowances for subsistence or quarters. The amount of forfeiture of

pay is expressed in whole dollar amounts, not in fractions, and shows the number of months affected. An example of a properly stated forfeiture is "to forfeit \$50 pay per month for 2 months."

If the punishment includes both reduction, whether or not suspended, and forfeiture of pay, the forfeiture must be based on the grade to which the accused is reduced. Forfeitures are effective on the date imposed unless suspended or deferred. Where a previous forfeiture is being executed, that forfeiture will be completed before any newly imposed forfeiture is executed.

## Extra Duty

Extra duties involve duties in addition to those normally assigned. Various types of duties may be awarded, including fatigue duties. The MCM prohibits extra duties that are a known safety or health hazard, those that are cruel and unusual, or those that are not sanctioned by naval custom.

Table 6-1.—Limits of Punishments Under UCMJ, Article 15

		PUNISHMENT							
IMPOSED BY	IMPOSED ON	CONFINEMENT ON B&W OR DIM RATS <sup>1</sup>	CORRECTIONAL CUSTODY <sup>2</sup>	ARREST IN QUARTERS <sup>3</sup>	FORFEITURE <sup>4,5</sup>	REDUCTION <sup>4,6</sup>	EXTRA DUTIES <sup>7</sup>	RESTRICTION TO LIMITS <sup>7</sup>	ADMONITION OR REPRIMAND <sup>4</sup>
GENERAL OFFICERS IN COMMAND	OFFICERS	NO	NO	30 days	1/2 of 1 month for 2 months	NO	NO	60 days	YES
	E-4 TO E-9	NO	NO	NO	1/2 of 1 month for 2 months	1 grade	45 days	60 days	YES
	E-1 TO E-3	3 days	30 days	NO	1/2 of 1 month for 2 months	1 grade	45 days	60 days	YES
O-4 to O-6	OFFICERS	NO	NO	NO	NO	NO	NO	30 days	YES
	E-4 TO E-9	NO	NO	NO	1/2 of 1 month for 2 months	1 grade	45 days	60 days	YES
	E-1 TO E-3	3 days	30 days	NO	1/2 of 1 month	1 grade	45 days	60 days	YES
O-3 below and OICs <sup>8</sup>	OFFICERS	NO	NO	NO	NO	NO	NO	15 days	YES
	E-4 TO E-9	NO	NO	NO	7 days	1 grade	14 days	14 days	YES
	E-1 TO E-3	3 days	7 days	NO	7 days	1 grade	14 days	14 days	YES

<sup>1</sup>May be awarded only if attached to/embarked in a vessel and may not be combined with any other restraint punishment or extra duties.

<sup>2</sup>May not be combined with restriction or extra duties.

<sup>3</sup>May not be combined with restriction.

<sup>4</sup>May be imposed in addition to or in lieu of all other punishments.

<sup>5</sup>Shall be expressed in whole dollar amounts only.

<sup>6</sup>Chief petty officers, paygrades E-7 thru E-9, may not be reduced at NJP in the Navy; while Marine Corps NCOs, paygrades E-6 thru E-9, may not be reduced at NJP.

<sup>7</sup>Restriction and extra duties may be combined to run concurrently but the combination may not exceed the maximum imposable for extra duties.

<sup>8</sup>OICs have NJP authority over enlisted personnel only.

When extra duties are imposed upon a petty officer, the duties cannot be demeaning to his or her rate or position. The immediate CO of the accused normally designates the amount and character of extra duty. Such duties normally should not extend beyond 2 hours per day. Guard duty may not be assigned as extra duty. Extra duty is not performed on Sunday although Sundays count as if such duty was performed.

### **Reduction in Grade**

Reduction in paygrade is limited to one grade only for members in paygrades E-1 through E-6. E-7 through E-9 personnel cannot be reduced in grade at NJP. The grade from which reduced must be within the promotional authority of the CO imposing the reduction. See also NAVMILPERSMAN, Article 3420140.2, for additional information on reduction.

### **Correctional Custody**

Correctional custody is a form of physical restraint of a person during either duty or nonduty hours, or both, and may include hard labor, extra duties, or fatigue duties. Awardees may perform military duty but not watches and cannot bear arms or exercise authority over subordinates. Specific regulations for administering correctional custody can be found in OPNAVINST 1640.7, *Instructions for Administering Correctional Custody*.

Time spent in correctional custody is not lost time. Correctional custody cannot be imposed on paygrades E-4 and above. To assist commanders in imposing correctional custody, correctional custody units (CCUs) have been established at major shore installations. Check the local operating procedures for the nearest CCU before correctional custody is imposed.

### **Confinement on Bread and Water or Diminished Rations**

These punishments can only be awarded to E-3s and below if they are attached to or embarked in a vessel. These punishments involve physical confinement and are equivalent to solitary confinement because contact is allowed only with authorized personnel.

A medical officer must first certify in writing that the accused will suffer no serious injury and that the place of confinement will not harm the accused.

Diminished rations is a restricted diet of 2,100 calories per day, and instructions for its use are detailed in SECNAVINST 1640.9.

## **EXECUTION OF PUNISHMENTS**

All punishments, if not suspended, take effect when imposed. This means that the punishment in most cases will take effect when the CO informs the accused of his or her decision. Thus, if the CO wishes to impose a prospective punishment, one to take effect at a future time, he or she should simply delay the impositions of nonjudicial punishment altogether. There are, however, several specific rules that authorize the deferral or stay of a punishment already imposed.

### **Deferral of Correctional Custody or Confinement on Bread and Water or Diminished Rations**

Section 0113b(3) of the *JAG Manual* permits a CO or an OIC to defer correctional custody, confinement on bread and water, or confinement on diminished rations for up to 15 days when adequate facilities are not available; the exigencies of the service so require; or the accused is not physically fit for the service of the punishments.

### **Deferral of Restraint Punishments Pending NJP Appeal**

A service member who has appealed nonjudicial punishment may be required to undergo any punishment imposed while the appeal is pending. However, if action is not taken on the appeal within 5 days after the appeal was submitted, and if the service member so requests, any unexecuted punishment involving restraint or extra duties is stayed until action on the appeal is taken.

### **Interruptions of Restraint Punishment by Subsequent NJP**

The execution of any nonjudicial punishment involving restraint will normally be interrupted by a later nonjudicial punishment where restraint is awarded. Thereafter, the unexecuted portion of the prior restraint punishment will be executed. The officer imposing the later punishment, however, may order that the prior punishment be completed before the service of the later punishment.

## **Interruption of Punishment by Unauthorized Absence (UA)**

Service of all nonjudicial punishments is interrupted during any period of unauthorized absence (UA). Also, a punishment of reduction may be executed during any period of UA.

## **COMBINATION OF PUNISHMENTS**

When NJP is awarded, certain combinations of punishments are authorized and some combinations are unauthorized. Refer to part V, par. 5d, MCM, 1984, for more information.

### **Acceptable Combinations**

Here are a few examples of acceptable combinations of punishments:

1. If an O-4 CO wishes to impose the maximum amount of all permissible nonjudicial punishments upon an E-3, the maximum that could be imposed would be:

- a. a punitive letter of reprimand or admonition (or an oral reprimand or admonition);
- b. reduction to E-2;
- c. forfeiture of one-half pay per month for 2 months (based upon the reduced rate); and
- d. 45 days' restriction and extra duties to be served concurrently.

2. If an O-3 CO (or any OIC, regardless of grade) wishes to impose the maximum amount of all permissible nonjudicial punishments upon an E-3, the maximum that could be imposed would be:

- a. a punitive letter of reprimand or admonition (or an oral reprimand or admonition);
- b. reduction to E-2;
- c. forfeiture of 7 days' pay (based upon the reduced rate); and
- d. 14 days' restriction and extra duties to be served concurrently.

### **Unacceptable Combinations**

The following combinations of NJP punishments are unacceptable:

- Arrest in quarters may not be imposed in combination with restriction.

- Confinement on bread and water or diminished rations may not be imposed in combination with correctional custody, extra duties, or restriction.
- Correctional custody may not be imposed in combination with restriction or extra duties.
- Restriction and extra duties may be combined to run concurrently, but the combination may not exceed the maximum that can be awarded for extra duties.

## **CLEMENCY AND CORRECTIVE ACTION ON REVIEW**

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*LEARNING OBJECTIVES:* Define clemency and corrective action. Explain who has the authority to take action. Discuss the various forms of clemency and corrective action.

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Clemency is a reduction in the severity of punishment and is at the discretion of the officer authorized to take such action. Corrective action is a reduction in the severity of punishment or other action taken by proper authority to correct some defect in the nonjudicial punishment proceeding and to offset the adverse impact of the error on the accused.

## **AUTHORITY TO ACT**

After the imposition of nonjudicial punishment, the following officials have authority to take clemency action or corrective action:

- The officer who initially imposed the NJP (this authority is inherent in the office, not the person holding the office).
- The successor in command to the officer who imposed the punishment.
- The superior authority to whom an appeal from the punishment would be sent, whether or not such an appeal has been made.
- The CO or OIC of a unit, activity, or command that the accused is properly transferred to after the imposition of punishment by the first commander.
- The successor in command of the latter.

For more information on authority to act see part V, par. 6a, MCM, 1984, and section 0118 of the JAG Manual.

## FORMS OF ACTION

The forms of action that can be taken, either as clemency or corrective action, consist of setting aside, remission, mitigation, and suspension.

### Setting Aside

This power has the effect of voiding the punishment and restoring the rights, privileges, and property lost to the accused by virtue of the punishment imposed. This action should be reserved for compelling circumstances where the commander feels a clear injustice has occurred. This normally means that the commander believes the punishment of the accused was clearly a mistake.

If the punishment has been executed, executive action to set it aside should be taken within a reasonable time—normally within 4 months of its execution. The CO who wishes to reinstate an individual reduced in rate at NJP is not bound by the provisions of MILPERSMAN, Article 2230200, limiting advancement to a rate formerly held only after a minimum of 12 months' observation of performance. Such action can be taken with respect to the whole or a part of the punishment imposed. All entries pertaining to the punishment set aside are removed from the service record of the accused, Refer to MILPERSMAN, Article 5030500.

According to MILPERSMAN, Article 5040110, once a punishment is set aside, the CO prepares and personally signs (no By direction signature is allowed) a letter of notification as shown in figure 6-8. This letter is sent to the Chief of Naval Personnel (PERS-82 for officers) (PERS-83 for enlisted) to make sure all local records are purged of any notation of the NJP and its residual effects. PERS-82 or 83 will notify the CO and the member when the action has been completed.

### Remission

This action also relates to the unexecuted portions of punishment; that is, those parts that have not been completed. This action relieves the accused from having to complete his or her punishment, though the accused may have partially completed it. Rights, privileges, and property lost by virtue of executed portions of punishment are not restored, nor is the

punishment voided as in the case when it is set aside. The expiration of the current enlistment or term of service of the service member automatically remits any unexecuted punishment imposed under Article 15.

### Mitigation

This action also relates to the unexecuted portions of punishment. Mitigation of punishment is a reduction in the quality or quantity of the punishment imposed. Quality means type of punishment while quantity means how much. In no event may the punishment be increased.

**QUALITY.—** Without any change in quantity, the following quality reductions may be taken:

- Arrest in quarters to restriction.
- Confinement on bread and water or diminished rations to correctional custody
- Correctional custody or confinement on bread and water or diminished rations to extra duties or restriction or both (to run concurrently)
- Extra duties to restriction

**QUANTITY.—** The length of deprivation of liberty or the amount of forfeiture or other money punishment also can be reduced and mitigated without any change in the quality (type) of punishment.

**REDUCTION IN GRADE.—** Reduction in grade, though executed, may be mitigated to forfeiture of pay. The amount of forfeiture can be no greater than that which could have been imposed by the mitigating commander had he or she initially imposed punishment. This type of mitigation must be completed within 4 months after the date of execution.

In mitigating nonjudicial punishment, neither the quality nor the quantity of the punishment may be increased. Therefore, it would not be possible to mitigate 3 days' confinement on bread and water to 4 days' restriction or to mitigate 60 days' restriction to 1 day of confinement on bread and water.

### Suspension

Suspension is an action to withhold the execution of punishment for a time pending the good behavior of the accused. Only later misconduct during the probationary period will cause the suspension to be vacated (revoked) and this misconduct must be an offense under the UCMJ. For more information refer to the JAGMAN.

### **SAMPLE LETTER OF NOTIFICATION**

From: (Command setting aside punishment)  
To: Chief of Naval Personnel (PERS-82 or 83, as appropriate)  
Subj: SET ASIDE OF NJP ICO (GRADE/RATE, NAME, SSN)  
Ref: (a) UCMJ

1. I hereby set aside the nonjudicial punishment (NJP) in the case of (grade/rate, name). All rights, privileges, and property affected by virtue of the execution of this punishment shall be restored. In accordance with Article 15(d) of reference (a), request that you remove all reference to the NJP contained in (grade/rate, names) official record. Request that the copy-to addresses take appropriate restorative action in the case of (grade/rate, name) and notify me and the member concerned when completed.

2. The following identifying information is provided:

a. Name: (Grade/Rate, Name, SSN)

b. Date of NJP: (date)

c. Imposing Command: (Indicate using guideline below)

(If different from the command setting aside, indicate by Standard Navy Distribution List [SNDL] long title and forward a copy of the letter of notification to that command.)

(If imposing command is also the command that is setting aside the NJP, indicate by stating "This command.")

d. Reason: (Indicate)

3. This letter shall not be filed in (grade/rate, name) official record, but shall be destroyed after your action is completed.

Signature of Commanding Officer  
(By direction not allowed)

copy to:  
(command that imposed punishment)  
(cognizant personnel office)  
(cognizant disbursing office if pay affected)  
(member concerned)

**Figure 6-8.—Sample letter of notification.**

## NJP APPEAL

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**LEARNING OBJECTIVES:** Explain the procedure and the time limitations for NJP appeal. Identify and explain the contents of the NJP appeal package,

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A member who is awarded NJP and who believes the punishment unjust or disproportionate to the offense has the right to appeal to higher authority.

### PROCEDURE

The commanding officer is required to make sure the accused is fully advised of his or her right to appeal. Refer to part V, par. 4c, MCM, 1984, and JAGMAN, sec. 0110e. Figure 6-9 is an accused's acknowledgement of appeal rights that should be signed by the accused and witnessed in order to prove that the accused was informed of appeal rights. File this form with all the other papers in the accused's case file in the UPB.

A person punished under Article 15 may appeal the imposition of such punishment through proper channels to the appropriate appeal authority. If an offender is transferred before filing the appeal, the new CO should send the appeal directly to the officer who imposed punishment.

When the officer who imposed the punishment is in the Navy chain of command, the appeal will normally be sent to the area coordinator authorized to convene GCMs. A GCM authority superior to the officer imposing punishment may, however, set up an alternate route for appeals. Refer to the JAGMAN for more information on NJP appeals.

### TIME

Appeals must be submitted in writing within 5 days of the imposition of NJP or the right to appeal is waived in the absence of good cause. The appeal period runs from the date the accused is informed of his or her appeal rights. Normally, this is the day NJP is imposed. When an appeal is submitted more than 5 days after the imposition of NJP (less mailing delay), the officer acting on the appeal determines whether "good cause" was shown for the delay.

#### Extension of Time

If the accused can show that it would be impossible or extremely difficult to submit the appeal within the 5-day period, the accused should

immediately request an extension of time from the officer who imposed the punishment. The officer imposing NJP determines whether good cause was shown and advises the accused whether an extension of time is permitted.

#### Request for Stay of Restraint or Extra Duty

A service member who has appealed may be required to undergo any restraint punishment or extra duties imposed while the appeal is pending. If action is not taken on the appeal by the appeal authority within 5 days after the written appeal has been submitted and if the accused has so requested, any remaining restraint or extra duties will be stayed until action on the appeal is taken. The accused should include in his or her written appeal a request for stay of restraint punishment or extra duties; however, a written request for a stay is not specifically required.

### CONTENTS OF APPEAL PACKAGE

The appeal package will consist of the appellant's letter of appeal, the endorsement of the officer who imposed the NJP, and the response of the supervising authority.

#### Appellant's Letter

The appellant's letter should be addressed to the appropriate authority via the commander who imposed the punishment and other appropriate officers in the chain of command. The letter should set forth the obvious features of the nonjudicial punishment (date, offense, who imposed it, and punishment imposed), and detail the specific grounds for relief.

There are only two grounds for appeal: the punishment was unjust, or the punishment was disproportionate to the offense committed. The grounds for appeal are broad enough to cover all reasons for appeal.

**UNJUST PUNISHMENT.—** Unjust punishment exists when the evidence is not sufficient to prove the charges; when the statute of limitations prohibits lawful punishment; or when any other fact, including a denial of substantial rights, calls in question the validity of the punishment.

**DISPROPORTIONATE PUNISHMENT.—** Disproportionate punishment is when, in the judgment of the reviewer, the penalty is too severe for the offense committed. When an offender believes the

### ACCUSED'S ACKNOWLEDGEMENT OF APPEAL RIGHTS

I, \_\_\_\_\_, SSN \_\_\_\_\_.  
(Name and grade of accused)

assigned or attached to \_\_\_\_\_, have been informed of the following facts concerning my rights of appeal as a result of captain's mast held on \_\_\_\_\_

a. I have the right to appeal to (specify to whom the appeal should be addressed).

b. My appeal must be submitted within a reasonable time. Five days after the punishment is imposed is normally considered a reasonable time, in the absence of unusual circumstances. Any appeal submitted thereafter may be rejected as not timely. If there are unusual circumstances which I believe will make it extremely difficult or not practical to submit an appeal within the 5-day period, I should immediately advise the officer imposing punishment of such circumstances and request an appropriate extension of time in which to file my appeal.

c. The appeal must be in writing.

d. There are only two grounds for appeal; that is:

(1) The punishment was unjust, or

(2) The punishment was disproportionate to the offense(s) for which it was imposed.

e. If the punishment imposed included reduction from the paygrade of E-4 or above, or was in excess of arrest in quarters for 7 days, correctional custody for 7 days, forfeiture of 7 days' pay, extra duties for 14 days, restriction for 14 days, or detention of 14 days' pay, then the appeal must be referred to a military lawyer for consideration and advice before action is taken on my appeal.

\_\_\_\_\_  
(Signature of Accused/Date)

\_\_\_\_\_  
(Signature of Witness/Date)

Figure 6-9.—Accused's acknowledgement of appeal rights.

punishment is too severe, an appeal is made on the grounds of disproportionate punishment. A punishment may be legal but excessive or unfair considering circumstances such as the nature of the offense; the absence of aggravating circumstances; the prior record of the offender; and other circumstances in extenuation and mitigation.

**STYLE OF LETTER.**— The grounds for appeal need not be stated artfully in the accused's appeal letter, and the reviewer may have to deduce the appropriate grounds implied. Unartful draftsmanship or improper addressees or other administrative irregularities are not grounds for refusing to send the appeal to the reviewing authority. If you note any serious administrative mistakes, correct them in the

## SAMPLE NJP APPEAL

5800  
11 Feb CY

From: DPSA Jane A. Doe, USN, 333-33-3333  
To: Commander Fleet Air Mediterranean  
Via: Commanding Officer, U.S. Naval Support Activity, Naples, Italy

Subj: APPEAL FROM NONJUDICIAL PUNISHMENT

Ref (a) Art. 15(e), UCMJ  
(b) Part V, par. 7, MCM, 1984  
(C) JAGMAN 0116

Encl: (Statements of other persons of facts or matters in mitigation which support the appeal)  
(1)  
(2)  
(3)

1. As provided by references (a) through (c), appeal is herewith submitted from nonjudicial punishment imposed upon me on 10 February 19CY by Captain Jon T. Boate, Commanding Officer, U.S. Naval Support Activity, Naples, Italy.

2. Enclosures (1) through (3) are statements which support my appeal. I am appealing the charges and specifications as follows:

a. Offense(s)

Charge: Violation of Article 134, UCMJ

Specification: In that DPSA Jane A. Doe, USN, was, on board U.S. Naval Support Activity, Naples, Italy, on or about 29 January 19CY, drunk and disorderly.

b. Punishment: Forfeiture of \$250.00 pay per month for 2 months

c. Grounds of Appeal

Punishment for the charge is unjust because I was not really that drunk and unfortunately just lost my balance while dancing and fell into the plate glass window.

JANE A. DOE

Figure 6-10.—Sample NJP letter of appeal.

## SAMPLE FIRST ENDORSEMENT TO NJP APPEAL

5800  
Ser  
13 Feb CY

FIRST ENDORSEMENT on DPSA Jane A. Doe's ltr of 11 Feb CY

From: Commanding Officer, U.S. Naval Support Activity, Naples, Italy  
To: Commander Fleet Air Mediterranean

Subj: APPEAL FROM PUNISHMENT ICO DPSA JANE A. DOE, USN, 333-33-3333

Encl: (4) NAVPERS 1626/7 with attachments  
(5) DPSA Doe's record of performance (page 9)

1. Forwarded for action. Enclosures (4) and (5) are attached in amplification of the appeal.
2. (This paragraph should contain a statement of facts or circumstances not contained in appellant's letter that would aid in arriving at a proper determination. This information should not be argumentative nor in the form of a "defense" to the matters stated in appellant's letter. See JAGMAN 0116c.)

JON T. BOATE

Figure 6-11.—Sample first endorsement to NJP appeal.

forwarding endorsement. Do not send the appeal back to the accused for redrafting; the appeal should be sent promptly to the reviewing authority. See article 1108, *U.S. Navy Regulations, 1990*, for more information on appeals. Refer to figure 6-10 for a sample of an accused's letter of appeal.

### Contents of Forwarding Endorsements

All via addressees should use a simple forwarding endorsement and should not comment on the validity of the appeal. However, the exception to this rule is the endorsement of the officer who imposed the punishment. Section 0116c of the *JAG Manual* requires that this endorsement, shown in figure 6-11, should include the following information:

- A comment on any matters of fact contained in the letter of appeal that the officer who imposed punishment considers inaccurate.
- Include also an account of any facts not otherwise included in the appeal papers. If such factual information was brought out at the mast, the endorsement should so state and include any comment made by the appellant. Any other adverse factual information stated in the endorsement that was not previously documented should be referred to the appellant for comment.
- As an enclosure, a copy of the completed mast report form (NAVPERS 1626/7).
- As enclosures, copies of all documents and signed statements that were considered as evidence at the mast or, if the NJP was imposed on the basis of the record of a court of inquiry or other fact-finding body,

a copy of that record, including the findings of fact, opinions, and recommendations, together with copies of any endorsements.

- As enclosures, copies of the appellant's record of performance as set forth on service record page 9, administrative remarks set forth on page 13, and disciplinary records set forth on page 7.

The officer who imposed the punishment should not, by endorsement, seek to "defend" against the allegations of the appeal but should, where appropriate, explain the rationalization of the evidence. For example, the officer may have chosen to believe one witness while disbelieving another witness. This should be included in the endorsement. The officer who imposed punishment may properly include any facts relevant to the case as an aid to the reviewing authority but should avoid irrelevant character assassination of the accused. Finally, any errors made in the decision to impose nonjudicial punishment or in the amount of punishment imposed should be corrected and the corrective action noted in the forwarding endorsement. Even though corrective action is taken, the appeal must still be sent to the reviewer.

#### **Endorsement of the Reviewing Authority**

There are no particular legal requirements on the content of the reviewer's endorsement except to inform the offender of his or her decision. Figure 6-12, section A, shows a sample response by a supervisory authority on an NJP appeal. A legally sound endorsement will include the reviewer's specific decision on each ground of appeal, the basic reasons for the decision, a statement that a lawyer has reviewed the appeal, if such review is required, and instructions for the disposition of the appeal package after the offender receives it.

The endorsement should be addressed to the accused via the appropriate chain of command. Where persons not in the direct chain of command (such as finance officers) are directed to take some corrective action, copies of the reviewer's endorsement should be sent to them. Words of warning or caution, if temperate in tone, are suitable for inclusion in the return endorsement of the reviewer.

#### **Return Endorsement of Via Addressees**

If any via addressee has been directed by the reviewer to take corrective action, the accomplishment of that action should be noted in that commander's endorsement. This endorsement should reiterate the steps the reviewer directed the accused to follow in disposing of the appeal package. These instructions should always be to return the appeal to the appropriate commander for filing with the records of his or her case. See figure 6-12, section B, for an example of this endorsement.

#### **Accused's Endorsement**

The last endorsement should be from the accused to the CO holding the records of the nonjudicial punishment. See figure 6-12, section C. The endorsement acknowledges receipt of the appeal decision and sends the package back for filing.

### **POSTMAST ACTIVITY**

---

*LEARNING OBJECTIVES:* Explain the postmast activity in terms of execution of NJP for enlisted and officer personnel. Describe the UPB. Review the checklist for NJP.

---

At the completion of NJP it is important that all necessary entries are made in the service record of the member being punished, the POD, the ship or station logbook and finally, the UPB.

#### **EXECUTION OF NJP FOR ENLISTED PERSONNEL**

When punishment is imposed as a result of CO's mast, it must be recorded in the accused's service record. Additionally, depending on the type of punishment imposed, certain forms and or letters must be prepared in conjunction with standard service record entries. The following discussion is provided to help you better understand the procedures for preparing these forms and letters used in conjunction with enlisted service record entries.

#### **Confinement Order (NAVPERS 1640/4)**

When a member is awarded punishment that includes confinement on bread and water or confinement on diminished rations, a Confinement Order, NAVPERS 1640.4, must be prepared. A

**SAMPLE ACTION BY SUPERVISORY AUTHORITY ON NJP APPEAL**

5800  
Ser  
14 Feb CY

From: Commander Fleet Air Mediterranean  
To: DPSA Jane A. Doe, USN, 333-33-3333  
Via: Commanding Officer, U.S. Naval Support Activity, Naples, Italy  
Subj: APPEAL FROM NONJUDICIAL PUNISHMENT ICO DPSA JANE A. DOE

1. Returned, appeal (granted) (denied).
2. Your appeal has been referred to a lawyer for consideration and advice prior to my action.

**SECTION  
A**

3. (Statement of reasons for action on appeal and remarks of admonition and exhortation, if desired.)
4. You are directed to return this appeal and accompanying papers to your immediate commanding officer for filing with the record of your case.

-----  
WATER T. DOOR

FIRST ENDORSEMENT on Commander Fleet Air Mediterranean ltr 5800  
Ser of 14 Feb CY

From: Commanding Officer, U.S. Naval Support Activity, Naples, Italy  
To: DPSA Jane A. Doe, USN, 333-33-3333  
Subj: APPEAL FROM PUNISHMENT ICO DPSA JANE A. DOE

**SECTION  
B**

1. Returned for delivery.
2. You are directed to return this appeal and accompanying papers to the legal officer for filing with the record in your case.

-----  
JON T. BOATE

SECOND ENDORSEMENT on Commander Fleet Air Mediterranean ltr 5800  
Ser of 14 Feb CY

From: DPSA Jane A. Doe, USN, 333-33-3333  
To: Commanding Officer, U.S. Naval Support Activity, Naples, Italy  
Subj: APPEAL FROM NONJUDICIAL PUNISHMENT

**SECTION  
C**

1. I acknowledge receipt and have noted the contents of the letter on my appeal from nonjudicial punishment.
2. The appeal and all attached papers are returned for filing with the record of my case.

JANE A. DOE

Figure 6-12.-Sample action by supervisory authority on NJP appeal.

<b>CONFINEMENT ORDER</b> NAVPERS 1640/4 (Rev. 7-82) S/N 0106-LF-016-4023																					
NAME (Last, first, middle) Seaman, Able B.	SSN 555-55-5555	RATE/GRADE BMSR	BRANCH SER USN																		
SHIP OR ORGANIZATION Naval Base, Norfolk, Virginia		DATE 25 March 19CY																			
<b>STATUS</b>																					
DETAINED (Alleged violation of UCMJ Articles)   "I have been informed that I am being confined for the above alleged offense(s)"  <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">Date</div> <div style="width: 55%;">Signature of accused</div> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;">Date</div> <div style="width: 55%;">Signature of witness</div> </div>	CONFINED AS RESULT OF <div style="display: flex; justify-content: space-between;"> <div> <input checked="" type="checkbox"/> NJP                  <input type="checkbox"/> SCM                  <input type="checkbox"/> SPCM                  <input type="checkbox"/> GCM             </div> <div><input type="checkbox"/> VACATED SUSPENSION</div> </div> CHARGES AND SPECIFICATION CONVICTED OF Viol Art. 86, UCMJ - UA from 0800, 22 Feb CY until 1530, 22 Mar CY SENTENCE ADJUDGED 30 days CCU    DATE    25 MAR CY IF SENTENCE DEFERRED, DATE DEFERMENT TERMINATED  <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 40%;">SENTENCE APPROVED</th> <th style="width: 30%;">APPROVED BY</th> <th style="width: 30%;">DATE</th> </tr> </thead> <tbody> <tr><td> </td><td>CA</td><td> </td></tr> <tr><td> </td><td>SA</td><td> </td></tr> <tr><td> </td><td>NCMR</td><td> </td></tr> <tr><td> </td><td>COMA</td><td> </td></tr> <tr><td> </td><td>OTHER</td><td> </td></tr> </tbody> </table>			SENTENCE APPROVED	APPROVED BY	DATE		CA			SA			NCMR			COMA			OTHER	
SENTENCE APPROVED	APPROVED BY	DATE																			
	CA																				
	SA																				
	NCMR																				
	COMA																				
	OTHER																				
PRE TRIAL CONFINEMENT NECESSARY																					
<input type="checkbox"/> TO ENSURE THE PRESENCE OF THE ACCUSED AT THE TRIAL <input type="checkbox"/> BECAUSE OF THE SERIOUSNESS OF THE OFFENSE CHARGED																					
CONFINEMENT DIRECTED AT <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 30%;">HOUR</th> <th style="width: 70%;">DATE</th> </tr> </thead> <tbody> <tr> <td>0900</td> <td>25 MAR CY</td> </tr> </tbody> </table>		HOUR	DATE	0900	25 MAR CY	TYPED NAME/RANK/TITLE J. A. Doe, CAPT, USN, CO SIGNATURE 															
HOUR	DATE																				
0900	25 MAR CY																				
<b>MEDICAL CERTIFICATE</b>																					
The above named individual was examined by me at <u>1005</u> on <u>25 MAR CY</u> and found to be <div style="display: flex; justify-content: space-between;"> <div>(HOUR)</div> <div>(DATE)</div> </div>																					
<input checked="" type="checkbox"/> fit <input type="checkbox"/> unfit for confinement. The following irregularities were noted during the examination, (if none, so state)																					
<input type="checkbox"/> I certify that from an examination of _____ <div style="display: flex; justify-content: space-between;"> <div>Name</div> <div>Rate</div> <div>SSN</div> </div> and of the place where he/she is to be confined, I am of the opinion that the execution of the foregoing sentence to confinement on (bread and water) (diminished rations) will/will not produce serious injury to his/her health.																					
TYPED NAME/RANK/TITLE Jon T. Boate, LT, MC, USN		SIGNATURE 																			
<b>RECEIPT FOR PRISONER</b>																					
The above named individual was received at <u>Correctional Custody Unit, Naval Base, Norfolk, VA.</u> <div style="text-align: center;">(NAME OF BRIG/CORRECTIONAL FACILITY)</div>																					
at <u>1015</u> on <u>25 Mar CY</u> <div style="display: flex; justify-content: space-between;"> <div>(HOUR)</div> <div>(DATE)</div> </div>																					
TYPED NAME/RANK/TITLE H. H. Hull MACS, USN, OIC		SIGNATURE 																			

Figure 6-13.—Confinement Order, NAVPERS 1640/4.

sample of a completed confinement order is shown in figure 6-13. In addition to preparing a confinement order, TAD orders must be prepared transferring the accused to the correctional custody facility under the provisions of the *Manual for the Operation of a Waterfront Brig/Correctional Custody Unit* OPNAVINST 1640.7. There are other administrative matters that must be completed when transferring an accused to a correctional custody facility and the specific requirements can be found in SECNAVINST 1640.9 and in SECNAVINST 1640.7, both of which outline the requirements for placing a person into correctional custody and procedures for administering the same.

### **Letter of Censure**

As previously discussed in this lesson, a CO may award as punishment an admonition or a reprimand to the accused. These can be either oral or written in the case of enlisted personnel, and in writing only in cases of commissioned and warrant officers. If the admonition or reprimand is to be written, the format shown in *JAG Manual* 0114f(3) should be used. When either of these types of letter of censure is prepared, careful attention to the requirement outlined in the *JAG Manual* should be followed. When the admonition or reprimand is given orally, as in the case of enlisted personnel, the proper notation must be made on the NAVPERS 1626/7 and recorded in the Punishment Awarded section of the service record page being used to record the results of CO's mast.

### **Enlisted Service Record Entries**

For other punishments that do not affect the pay of an individual (extra duty, restriction, or arrest in quarters), it is good administrative practice to spell out in writing the specific orders on these types of punishment even though there are no specific regulations requiring anything more than a notation in the proper block on the NAVPERS 1626/7. Figures 6-14 and 6-15 show samples of orders to carry out when extra duty and restriction have been awarded as a result of CO's mast.

In some cases involving restriction, your command may not have the facilities to properly administer restriction. In such cases, you should make arrangements with the nearest command that does have the facilities to properly administer restriction, and in these cases the personnel office will be required

to prepare TEMADD orders for the period of punishment.

### **NJP FOR OFFICERS**

We will now have a brief discussion of the procedures involved when an officer receives nonjudicial punishment as a result of CO's mast.

Whenever nonjudicial punishment is imposed upon an officer, the authority imposing the punishment immediately notifies PERS-82 by letter as soon as the results are final. If the officer imposing NJP is not a flag officer, the letter report must be submitted via the first flag officer in the administrative chain of command. These required reports are separate and distinct from any reported NJP that may be contained in investigations or other correspondence. Refer to MILPERSMAN, Article 3410100(2)(b), for the format of the report.

### **UNIT PUNISHMENT BOOK (UPB)**

The Unit Punishment Book (UPB) contains a record of all NJP hearings conducted by a command, not just those in which punishment was awarded, and is required by MILPERSMAN, Article 5030500. The form that is used to record NJP hearings is the NAVPERS 1626/7. When all actions are resolved on a particular NJP hearing, the space provided in the final administrative action portion of the NAVPERS 1626/7 (section J of figure 6-1) should be completed. This final administrative action indicates when the case record is filed and an entry in the UPB should be made.

Though there are no specific instructions as to what manner these cases should be filed in the UPB, the suggested procedure is to file cases in alphabetical order, chronological order by date, or a combination of both.

### **LOG ENTRIES**

The *Standard Organization and Regulations of the U.S. Navy*, (SORM), OPNAVINST 3120.32, prescribes the log entry for mast results afloat. Such an entry should be substantially in the format shown previously for the POD entry, and you should provide this information to the officer of the deck (OOD) for inclusion in the deck log. Although there is no Navywide requirement for logbooks ashore, you will find that logs are kept ashore according to local instructions. Unless these local instructions require a

DEPARTMENT OF THE NAVY  
NAVAL BASE  
NORFOLK, VIRGINIA 23511

\_\_\_\_\_  
Date

From: Commanding Officer, Naval Base, Norfolk, Virginia  
To:

Subj: ORDERS TO CARRY OUT NONJUDICIAL PUNISHMENT

Ref: (a) Manual for Courts-Martial, 1984  
(b) U.S. Navy Regulations, 1990

1. You appeared at commanding officer's nonjudicial punishment this date and have been awarded \_\_\_\_\_ days' extra duty.
2. Immediately upon receipt of these orders, you will report to the Chief Master-at-Arms, Building 27, Naval Base, Norfolk, Virginia, and under his supervision perform the above extra duty. In the event you are not able to perform extra duty because of a watch, being in sick bay, etc., at the time specified by the Chief MAA, you will have your leading petty officer notify him in person or by calling extension 1111 during regular working hours and extension 1000 after normal working hours, Saturdays, or on holidays.
3. The Chief MAA will supervise the extra duty to be performed in accordance with references (a) and (b).
4. The hours of extra duty shall be reasonable, not less than 2 hours per day, and shall be performed outside of normal duties and working hours. Extra duty shall not be performed on Sunday although Sunday counts in the computation of the period for which such punishment is imposed.
5. Any failure to carry out these orders will result in further disciplinary action.
6. Upon completion of this punishment, the Chief MAA will notify the commanding officer, via the discipline officer, that such punishment has been completed.

Discipline Officer  
By direction

-----  
I have read the above orders to the individual named and have delivered to him one copy.

\_\_\_\_\_  
Discipline Officer/Master-at-Arms

Copy to:  
CMAA  
Accused's LPO

Figure 6-14.—Sample letter of orders to carry out NJP punishment of extra duty.

DEPARTMENT OF THE NAVY  
NAVAL BASE  
NORFOLK, VIRGINIA 23511

\_\_\_\_\_  
Date

From: Commanding Officer, Naval Base, Norfolk, Virginia  
To:

Subj: INSTRUCTIONS FOR CARRYING OUT PUNITIVE RESTRICTION

1. You appeared at commanding officer's nonjudicial punishment this date and have been awarded \_\_\_\_\_ days' restriction without suspension from duty.

2. The limits of your restriction are the confines of the Naval Base, Norfolk, Virginia proper. This excludes any recreational facilities on board the base.

3. You will report and muster at the following times:

With the Master-at-Arms, Building 27

Weekdays: 0745, 1230, and 1600

With the OOD, Quarterdeck, Building 27

Weekdays: 2000 and 2200

Saturdays, Sundays, and Holidays: 0745, 1000, 1230, 1400,  
1600, 2000, and 2200

The above musters will be in the uniform of the day.

4. Additional rules concerning your restriction will be found on the reverse side of this form. You will read these additional instructions and sign the acknowledgement below.

Discipline Officer  
By direction

-----  
I have read and fully understand the instructions concerning my restriction and I hereby acknowledge receipt of one (01) signed original of these orders.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Signature of person being restricted

DISTRIBUTION:

Original to person being restricted

CMAA

OOD

Discipline Officer

Figure 6-15.—Sample letter of instruction for carrying out punitive restriction.

different format, you should provide information about the mast results to the OOD in the same format that is used afloat.

## NJP CHECKLIST

Figure 6-16, checklist for report chit/NJP processing, is provided for you as a guide in helping you to carry out all the responsibilities inherent in nonjudicial punishment proceedings.

## SUMMARY

Nonjudicial punishment is the lowest form of discipline available to COs to aid them in maintaining good order and discipline within the Navy. As you can see from the preceding discussion, there are many things to consider when the various aspects of nonjudicial punishment are carried out. It is important for you, as an MA, to keep abreast of all the requirements and procedures associated with the proper administration of NJP because of its effect upon individuals as well as its effect upon the Navy.

### CHECKLIST FOR REPORT CHIT/NJP PROCESSING

The following process assumes that the command has a local report chit or system for reporting offenses and conducting the preliminary inquiry prior to the preparation of a NAVPERS 1626/7 for use at XOI or CO's mast.

#### A. BEFORE CO's MAST

1. Log local report into the logbook. (A log should be used for tracking the report through your command.)
2. Send local report and request for preliminary inquiry and recommendation as to disposition to SNM's department head.
3. If returned recommending XOI or mast, check service record out from personnel or PSD.
4. Review service record to ensure all pages are there and to determine if SNM is on any suspended sentence, is in a frocked paygrade, or has been given an administrative separation warning.
5. Prepare NAVPERS 1626/7 and appropriate acknowledgement of rights from *JAG Manual*. If a UA case, be sure to have a page 601/6R or page 13.
6. Attach preliminary inquiry report, including statements and other evidence, to report chit.
7. Contact and inform the accused of all rights and let him or her inspect the evidence. (If shore-based, set up appointment with defense counsel if accused wants to consult with counsel.)
8. Inform accused, his or her supervisors, and witnesses of time and place of XOI/CO's mast.

#### B. AFTER CO's MAST

1. Ensure CO has completed section of NAVPERS 1626/7 entitled Action of the Commanding Officer.

Figure 6-16.—Checklist for report chit/NJP processing.

2. Inform accused of right to appeal NJP. Be sure accused signs the appropriate forms. Ensure NAVPERS 1626/7 is modified to reflect the 5-day time limit vice 15 days which is preprinted on NAVPERS 1626/7.

3. Ensure personnel prepares necessary service record entries.

a. Service record entries required when the commanding officer EXCUSES or DISMISSES the offense(s):

(1) When the service record contains an entry concerning UA, an entry must be made to show what action was taken. If the UA is less than 24 hours, a page 13 entry is required.

(2) If UA is more than 24 hours, completion of a page 601-6R is required.

(3) For all other offenses EXCUSED or DISMISSED, no service record entry is required. If UA offense excused or dismissed, page 13 required to reflect the disposition.

b. When mast results in a decision to refer charges to trial by summary or special court-martial, prepare a Charge Sheet, DD 458. No service record entry is required.

c. When mast results in a decision to refer charges to a pretrial investigation under Article 32, no service record entry is required.

d. Required service record entries if punishment imposed:

(1) Punishments NOT including reduction or forfeiture of pay:

(a) NAVPERS 1070/613 (Page 13)

(b) NAVPERS 1070/609 (Page 9)

(c) NAVPERS 1070/606 (Page 6) - Must be completed in UA cases in excess of 24 hours. Since UA of 24 hours or more is lost time, completion of the page 6 (blocks 1 and 2, 38 through 42, and block 50) must be timely and accurate. Strict adherence to the PAYPERSMAN, section 90435, is mandatory.

(2) Punishment including reduction or forfeiture of pay:

(a) NAVPERS 1070/607 (Page 7)

(b) NAVPERS 1070/609 (Page 9)

(c) NAVPERS 1070/604 (Page 4) if reduction awarded.

(d) NAVPERS 1070/606 (Page 6) to be completed in UA cases in excess of 24 hours as outlined above.

Figure 6-16.—Checklist for report chit/NJP processing-Continued.

(e) If reduction and forfeitures, ensure forfeitures are based on reduced pay-grade (even if reduction suspended). NOTE: *Manual of Advancement*, BUPERSINST 1430.16, section 301.12.17 states that all lost time in excess of 15 days as a result of UA, sick, misconduct, confinement, etc., is not creditable in computing service in paygrade. When cumulative lost time is in excess of 15 days in the same paygrade, adjust TIR date by adding the number of days' lost days, ONLY if there has been NO REDUCTION IN RATE.

(3) Punishments involving reduction, or forfeiture of pay which are suspended:

(a) NAVPERS 1070/613 (Page 13) if punishment awarded pertains to RIR or FF and was suspended.

(b) NAVPERS 1070/607 (Page 7) if one or more types of punishment awarded is suspended, but still included at least one punishment not suspended that pertains to pay.

(c) NAVPERS 1070/609 (Page 9) if reduction is awarded.

(d) NAVPERS 1070/604 (Page 4) if reduction is awarded.

(4) Punishments involving restraint:

(a) Correctional custody. If CC is awarded at mast, Temporary Additional Duty (TEMADD) orders with a copy of the NAVPERS 1626/7, Report and Disposition of Offense(s) attached must accompany the accused. NOTE: The accused will be escorted to the local medical facility for a preconfinement physical.

(b) Restriction to limits. If restriction is imposed, restriction papers need to be typed. Usually this is on a local preprinted form, necessitating only the completion of the accused's name, rate, and social security number. It will show the boundaries of restriction, times, dates, and places for muster, and is signed by someone authorized to do so.

(c) Extra duty. If extra duty is imposed, virtually the same procedure as in (b) above will be used. Again, notification is by preprinted locally prepared form which defines the extra duty, the time it will be accomplished, to whom the accused reports, and any extra instructions necessary.

(d) Confinement on bread and water. Prepare confinement orders for bread and water. The accused must be given a confinement physical and found to be fit for confinement on bread and water.

(e) File documents in UPB and, after all action (including any appeal), ensure it is complete.

(5) Remission, mitigation, or setting aside of NJP.

(a) The PAYPERSMAN (part 9, section 90436) contains block-by-block instructions for preparation of NAVPERS 1070/607 for these actions.

Figure 6-16.-Checklist for report chit/NJP processing—Continued.

(b) Refer to table 9-4-39h for instructions to mitigate, reinstate, or set aside the punishment for members who have previously been reduced in rate.

C. MISCELLANEOUS MATTERS

1. If the CO's NJP results in a restraint-type punishment, the details must be furnished to the OOD for inclusion in the deck log.

2. Prepare notice for POD. If it is the policy of commands to publish the results of CO's NJP in the command POD, strict compliance with JAGMAN 0115 is mandatory. (It is suggested that names of the offenders be omitted if the information may be disseminated to civilians.) In no instance will the social security number of an individual be used in the publication of NJP results. (See SECNAVINST 5211.5.)

3. If appropriate, prepare page 13—warning member of consequences of future misconduct.

4. If a basis for administrative discharge applies, determine if command wants to process member for discharge.

D. NJP APPEALS

1. After receipt of accused's appeal, prepare written endorsement for the CO's signature. Include a copy of NAVPERS 1626/7, copies of all statements or evidence used at mast, and copy of page 9 from accused's service record (with all endorsements). See JAGMAN 0116 for requirements.

2. Indicate appeal on NAVPERS 1626/7.

3. If no response to appeal is received from appeal authority within 5 days to accused's appeal, then restraint punishments must be stayed if accused has requested this.

E. OFFICER'S NJP

1. Before taking an officer to NJP, check with regulations promulgated by the type commander regarding any additional requirements or procedures required by them. (Many want notification prior to the NJP hearing. CINCPACFLT commands must have a prompt verbal report of all incidents of officer misconduct to CINCPACFLT).

2. If an officer is awarded NJP, then a disciplinary report must be sent to NMPC 82. (MILPERSMAN 3410100.2b contains the applicable provisions.)

3. If the officer is also being detached for cause, consult MILPERSMAN 3410105 for the provisions for this procedure.

Figure 6-16.-Checklist for report chit/NJP processing-Continued.

